IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1892.

ILLINOIS CENTRAL RAILROAD COMPANY,
Appellant,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
AND THE CITY OF CHICAGO,
Appellees.

BRIEF FOR APPELLANT.

BENJAMIN F. AYER,
OF COUNSEL FOR APPELLANT.

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Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT OF THE CASE.

This suit was commenced by an information or bill in equity filed by the Attorney General, in the name of the People of the State of Illinois, March 1, 1883, in the Circuit Court of Cook County, Illinois, against the Illinois Central Railroad Company and the City of Chicago. The United States was also named as a party defendant, but did not enter an appearance. No case was stated in the information, nor was any relief asked, against the City of Chicago. The only grievances complained of were the alleged acts and pretensions of the Illinois Central Railroad Company. (Rec., 3–15.)

The Railroad Company filed its answer in the State court at the first term after the commencement of the suit (Rec., 17–34), and also its petition and bond for the removal of the cause into the Circuit Court of the United States for the North-

ern District of Illinois. (Rec., 34–38.) The reason assigned for the removal was that it was a suit arising under the Constitution of the United States, within the meaning of those words as used in the second section of the Act of Congress of March 3, 1875, then in force, entitled "An Act to determine the jurisdiction of Circuit Courts of the United States and to regulate the removal of cases from the State courts, and for other purposes."

A transcript of the record was filed in the United States Circuit Court May 7, 1883 (Rec., 1); and on the 22d of the same month the City of Chicago appeared and filed its answer in that court, admitting all the allegations of fact contained in the information. (Rec., 39–41.)

A motion was made subsequently by the complainants' solicitor to remand the cause to the State court, but the motion was overruled (Rec., 41) on grounds mentioned in the opinion of Mr. Justice Harlan in *State of Illinois* v. *Illinois Central R. Co.*, 16 Fed. Rep., 881.

The pleadings afterwards underwent various alterations. An amended information was filed by the Attorney General, March 6, 1886, (Rec., 46–67), to which answers were filed by the Railroad Company and the city. (Rec., 69–95, 97–100.)

Amendments to the answer of the city, and a cross-bill by the city, were filed June 20, 1887. (Rec., 104–108, 108–117.) On the 21st of June 1887, leave was given the Attorney General to file amendments to the amended information, subject to the further judgment of the court as to the propriety of the same to be determined at the hearing; and the city of Chicago was permitted, subject to the same reservation, to file amendments to its answer and a cross-bill. The defendants were allowed to file answers to the information as amended and to the cross-bill within ten days, if they should desire to do so; and if no further answer should be made to the amended information, it was ordered that those already filed should be treated as answers to the same and all amendments thereof. (Rec., 117.) On the same day, a second amended information was filed by the Attorney General, (Rec., 121–143); and June 29, 1887, answers were filed by him and by the Railroad Company to the cross-bill. (Rec., 144–150, 151–163.) Replications were filed by the Attorney General on the same day to

the answers of the City of Chicago and the Railroad Company, (Rec., 164, 165); and on the next day an amendment was made to the answer of the Railroad Company to the amended information. (Rec., 166.) This amendment consists of a single clause to be inserted in the last paragraph on page 87 of the printed record, next after the word "insists" in the first line.

The avowed object of the suit is to settle by judicial decree the title to certain lands in Chicago, situated on the border of Lake Michigan between the mouth of the Chicago river and Sixteenth street, which have been reclaimed from the lake by the Illinois Central Railroad Company and occupied by it for many years for railroad purposes, and also the title to the submerged lands immediately adjacent to that part of the lake shore.

It is necessary to a clear understanding of the questions involved, that a general outline should be given of the essential facts and circumstances relating to the incorporation of the Railroad Company, the location of its railroad within the city of Chicago, and the rights acquired by the Company to the lands in controversy.

By an Act of Congress, approved September 20, 1850 (9 U. S. Statutes at Large, 466), the right of way not exceeding 200 feet in width through the public lands was granted to the State of Illinois, for the construction of a railroad from the southern terminus of the Illinois and Michigan Canal in that State (at LaSalle) to Cairo, at the confluence of the Ohio and Mississippi rivers, with a branch from that line to Chicago, and another, *via* the city of Galena, to Dubuque, in the State of Iowa. A grant of public lands was also made to the State to aid in the construction of the railroad and branches, which, by the terms of the Act, were to "be and remain a public highway for the use of the Government of the United States free from toll or other charge upon the transportation of any property or troops of the United States." It was also provided that the United States mail should at all times be transported on the said railroad under the direction of the Post Office Department at such price as the Congress may by law direct.

This Act of Congress was formally accepted by the legisla-

ture of the State February 17, 1851 (Laws 1851, 192–3). Seven days before the acceptance—February 10, 1851—the Illinois Central Railroad Company was incorporated for the purpose of constructing, maintaining and operating the railroad and branches contemplated in the Act of Congress. (Rec., 611-623.)

By the second section of its charter, the Company was authorized and empowered "to survey, locate, construct, com- "plete, alter, maintain and operate a railroad with one or more "tracks or lines of rails, from the southern terminus of the "Illinois and Michigan Canal to a point at the city of Cairo, "with a branch of the same to the city of Chicago on Lake "Michigan, and also a branch *via* the city of Galena to a point "on the Mississippi river opposite the town of Dubuque in the "State of Iowa."

It is provided in the third section, that "the said corporation "shall have right of way upon, and may appropriate to its sole "use and control for the purposes contemplated herein, land "not exceeding two hundred feet in width through its entire "length; may enter upon and take possession of and use all "and singular any lands, streams and materials of every kind, "for the location of depots and stopping stages, for the purpose "of constructing bridges, dams, embankments, excavations, "station-grounds, spoil banks, turnouts, engine-houses, shops "and other buildings necessary for the construction, complet- "ing, altering, maintaining, preserving and complete operation "of said road. *All such lands, waters, materials and privileges* "*belonging to the State, are hereby granted to said corporation* "*for said purposes;* but when owned or belonging to any per- "son, company or corporation, and cannot be obtained by "voluntary grant or release, the same may be taken and paid "for, if any damages are awarded, in the manner provided in "'An Act to provide for a general system of railroad incorpo- "rations' approved November 5, 1849; *and the final decision* "*or award shall vest in the corporation hereby created all the* "*rights, franchises and immunities in said Act contemplated and* "*provided.*"

The eighth section has the following provision: "Nothing "in this Act contained shall authorize said corporation to make "a location of their track within any city without the consent "of the common council of said city."

By the fifteenth section, the right of way and all the lands granted to the State by the Act of Congress before mentioned, and also the right of way over and through lands owned by the State, were ceded and granted to the corporation, for the "purpose of surveying, locating, constructing, completing, altering, maintaining and operating said road and branches." There was a requirement in this section (clause 3) that the railroad should be built *into* the city of Chicago.

By the eighteenth section, the Company is required, in consideration of the grants, privileges and franchises conferred, to pay into the treasury of the State, on the first Monday of December and June of each year, five per centum of the gross receipts of the road and branches for the six months then next preceding.

The twenty-second section provides for the assessment of an annual tax for State purposes upon all the property and assets of the corporation; and if this tax and the five per cent. charge upon the gross receipts shall not amount to seven per cent. of the total proceeds, receipts or income of the Company, it is required to pay the difference into the State treasury, "so as to make the whole amount paid equal at least to seven per cent. of the gross receipts of said corporation." Exemption is granted in this section from "all taxation of every kind, except as herein provided for."

The Act of November 5, 1849, referred to in the third section of the charter, provides a mode for condemning land required for railroad uses, and contains an express provision that upon the entry of judgment, the corporation "shall become seized in fee of all the lands and real estate described during the continuance of the corporation." (2 Laws 1849, 27.)

The consent of the common council to the location of the railroad within the city of Chicago was given by an ordinance passed June 14, 1852. (Rec., 624–629.) The ordinance provided (Sec. 1), that the railroad (with one or more tracks) should enter the city "at or near the intersection of its south-"ern boundary with Lake Michigan, and, following the shore "on or near the margin of said lake northerly to the southern "bounds of the open space known as Lake Park, in front of "canal section 15, continue northerly across the open space in "front of said section 15 to such grounds as the Company may "acquire between the north line of Randolph street and the

"Chicago river, upon which said grounds shall be located the "depot of said railroad within the city, and such other build- "ings, slips or apparatus as may be necessary and convenient "for the business of said company."

The ordinance also contained the following additional provisions:

"SEC. 2. That said Company may enter upon and use in "perpetuity for its said line of road and other works neces- "sary to protect the same from the lake, a width of 300 feet "from the southern boundary of said public ground near "Twelfth street to the northern line of Randolph street; the "inner or west line of the ground to be used by said Company "to be not less than 400 feet east from the west line of Mich- "igan avenue and parallel thereto.

"SEC. 3. The said Company may extend their works and "fill out into the lake to a point in the southern pier not less "than 400 feet west from the present east end of the same; "thence parallel with Michigan avenue to the north line of "Randolph street extended; but it is expressly understood "that the common council does not grant any right or privi- "lege beyond the limits above specified, nor beyond the line "that may be actually occupied by the works of said Com- "pany. It is further expressly understood that should any "damage or obstruction occur to the harbor of Chicago, "clearly traceable to the construction of said works contem- "plated by sections two and three hereof, then the said Com- "pany shall be held responsible for the same."

"SEC. 7. The said Company shall erect and complete, "within three years after they shall have accepted this ordi- "nance, and shall forever thereafter maintain a continuous wall "or structure of stone masonry, pier work or other sufficient "material, of regular and sightly appearance, and not to exceed "in height the general level of Michigan avenue opposite "thereto, from the north side of Randolph street to the south- "ern boundary of Lake Park before mentioned, at a distance "of not more than 300 feet east from and parallel with "the western or inner line pointed out for said Company, as "specified in section two hereof, and shall continue said works "to the southern boundary of the city, at such distance out- "side of the track of said road as may be expedient, which "structure shall be of sufficient strength and magnitude to pro-

" tect the entire front of said city, between the north line " of Randolph street and its southern boundary from further " damage or injury from the action of the waters of Lake " Michigan, and that part of the structure south of Lake Park " shall be commenced and prosecuted with all reasonable dis- " patch after the acceptance of this ordinance.

" SEC. 9. The said Company shall erect no buildings be- " tween the north line of Randolph street and the south line of " the said Lake Park, nor occupy nor use the works proposed " to be constructed between these points, except for the pas- " sage of, or for making up or distributing their trains; nor " place upon any part of their works between said points, any " obstruction to the view of the lake from the shore, nor suffer " their locomotives, cars or other articles to remain upon their " tracks, but only erect such works as are proper for the con- " struction of their necessary tracks and protection of the " same."

" SEC. 12. Upon the acceptance of this ordinance by the " said Company (which shall be within ninety days of the pass- " ing of the same) a contract or agreement embodying the " provisions herein contained, and stipulating that the permis- " sion, rights and privileges hereby conferred upon said Com- " pany shall depend upon the performance on their part of the " requirements made upon them by this ordinance, shall be " executed, sealed and delivered on the part of the City of " Chicago, by the mayor thereof, and on the part of the Illi- " nois Central Railroad Company, by the president thereof, " both in usual legal form."

The ordinance was accepted by the Railroad Company September 2, 1852; and a contract under seal between the Company and the city in accordance therewith was executed March 28, 1853. (Rec., 623–631.)

A map of Chicago, published by Rees and Rucker in 1849 will be found in the Record, which, it is proved, represents with substantial accuracy the shore line and the land bordering upon the lake between the river and the southern boundary of the city (then Twenty-second street) just before the railroad was located. (Rec., 284, 285, 286, *1,194.*) Another map published by Henry Hart in 1853, also to be found in the Record, shows the situation the year after the road was located. (Rec., 284, 286, *1,195.*)

The ground designated as Lake Park in the ordinance of June 14, 1852, is represented upon the Rees and Rucker map as a part of Michigan avenue. Upon the Hart map it is represented in the same way, but the words "Lake Park" are also inscribed in the south-east corner. This park (including the avenue) consisted, in 1852, of a narrow strip of ground on the border of the lake extending from Randolph street to Park Row (Block 23). The length of the strip was about a mile and one-eighth, and it varied in width from ninety to four hundred feet. (Rec., 282–3.)

The evidence shows that for several years preceding the passage of the ordinance the waters of the lake had been constantly wearing away this part of the shore. This process of erosion was apparently caused by the construction of the piers by the Government at the mouth of the river at some time prior to 1835, and it appears to have been greatly accelerated by the extension of the piers a year or two later. Attempts were made from time to time by the property-owners on Michigan avenue and by the city to protect the shore from further invasion by the lake, but their efforts proved ineffectual. When the railroad was located in 1852, more than half the land which in 1835 was included within the limits of the park and avenue had been worn away. At that time the lake had so far advanced upon the shore, that from Randolph street to Jackson street only a narrow margin of land from ninety to one hundred and twelve feet wide was left between the west line of the avenue and the lake, and serious apprehensions were felt by the mayor of the city and other residents on Michigan avenue for the safety of their property. At the south end, the width of the park and avenue had been diminished since 1836 from six or seven hundred feet to four hundred. (Rec., testimony of R B. Mason, 282–284; J. Y. Scammon, 232–258, 285–296, 441–449.)

The waters of the lake had wrought similar effects during the same period upon the shore south of Park Row, between Twelfth street and Eighteenth street. In 1840, the dry land along this part of the shore extended into the lake beyond the present works of the Railroad Company. Many acres were carried away by abrasion between 1835 and 1852. (Rec., Testimony of J. Y. Scammon, 289–291; C. C. P. Holden, 469–483.)

The strip of ground designated in the ordinance for the lo-

cation and construction of the railroad between the southern boundary of Lake Park and the north line of Randolph street, was 300 feet wide, the west line of the strip being 400 feet east of the west line of Michigan avenue and parallel thereto. The entire strip was covered by the waters of the lake. The railroad was located and built as prescribed by the ordinance. The tracks were laid upon a pile-bridge, and the depth of water along the line of piling varied from two and a half to nine feet. An exterior breakwater to protect the company's works and the shore was built outside the tracks on a line parallel with and about 600 feet east of the west line of Michigan avenue; and a similar protection was erected south of Park Row, at a convenient distance east of the tracks, to a point far beyond the southern boundary of the city. The space between the breakwater and the inner or west line of the railroad, north of Park Row, was afterwards filled with earth by the Railroad Company. This work was done gradually, and the filling was not completed until after the great fire in Chicago of 1871. (Rec., testimony of R. B. Mason, 282–284; J. Y. Scammon, 252; L. P. Morehouse, 352, 361, 363.)

From 1852 to 1871, and later, a considerable area between Park Row and Randolph street, west of the railroad, remained covered by water. This space has since been filled with earth. Michigan avenue, as now laid out and improved, is ninety feet wide, and the public ground between it and the railroad, except for a short distance at the north end, has a uniform width of 310 feet. The Hart map, published in 1853, shows the location of the railroad in the open waters of the lake, and the body of water which lay between it and the shore. Two lithographic views of Michigan avenue, one made in 1860 and the other in 1863, which were put in evidence, are proved to be substantially accurate representations of the lake shore as it was when they were published. (Rec., 284, 288, 290, *1,197*, *1,198*.)

When the ordinance of 1852 was passed, the City of Chicago was incorporated under a special charter approved February 14, 1851. Its eastern boundary was the lake; but police jurisdiction was vested in the common council over the harbor, which by the terms of the charter included "the piers and so much of Lake Michigan as lies within the distance of one mile into the lake, and the Chicago river and its branches to their respective sources." (Rec., 540–542.)

By an amendment to the charter approved February 28, 1854, the corporate limits were extended, so as to "include so much of the waters and bed of the lake as lie within one mile of the shore thereof and east of the (then) present boundaries of the city." (Rec., 543–4.)

It is not pretended that the State has ever made a direct grant to the city of any part of the bed of Lake Michigan. But the city claims to have been in 1852, and since, the legal owner of the public ground on the shore of the lake between Randolph street and Park Row. The origin, history and nature of this title may be as conveniently explained here as at any other point in the statement.

That part of the public ground lying south of the center line of Madison street extended is embraced within a local subdivision known as "Fractional Section Fifteen Addition to Chicago." The remainder lies within "Fort Dearborn Addition to Chicago."

Fractional Section Fifteen Addition. It is alleged in the information and admitted in the answers, that fractional section fifteen was one of the tracts of public land granted to the State by an Act of Congress approved March 2, 1827, for the purpose of aiding the State in opening a canal to unite the waters of the Illinois river with those of Lake Michigan. All the granted lands were declared to be "subject to the disposal of the legislature of the State for the purpose aforesaid and no other"; and express provision was made in the Act that the State under the authority of its legislature should "have power to sell and convey the whole or any part of the said land, and to give a title in fee simple therefor to whomsoever shall purchase the whole or any part thereof." (Rec., 580.) There was a proviso that the canal should be commenced within five years and completed within twenty years from the passage of the Act; but by an amendatory Act approved March 2, 1833, the time for commencing and completing the canal was extended five years. (Rec, 648.)

The canal was completed and open for navigation in 1848 (Rec., 507), and has been ever since in use during the season of navigation.

By an Act of the legislature, approved January 22, 1829, a board of canal commissioners was created, to locate the

canal and to commence and construct the work. (Rec., 580–583.)

By a subsequent Act, approved January 9, 1836, a new board was created consisting of three commissioners, who were put in charge of the canal and canal property. These commissioners were State officers, and the board continued in existence until 1843. By this Act the commissioners were directed to "cause the canal lands in or near Chicago, suitable therefor, to be laid off into town lots," and to proceed on the 20th day of June then next to sell the lots in fractional section fifteen, adjoining the town of Chicago, "it being first laid off and subdivided into town lots, streets and alleys, as in their best judgment will best promote the interest of the said canal fund." (Rec., 592, Secs. XXXII and XXXIII.)

In April 1836, the canal commissioners caused a map to be made upon which fractional section fifteen is subdivided into town lots and streets. (Rec., 235–6, *1,191.*) The map is styled "Map of Fractional Section No. Fifteen, Township 39 North, Range 14 East of the 3rd Principal Meridian. Surveyed and subdivided by the board of Canal Commissioners, pursuant to law, in the month of April, A. D. 1836." It shows upon its face that the subdivision embraces the whole fractional section. The tract is bounded, by the map, on the north by Madison street, west by State street, south by Twelfth street, and east by Lake Michigan. In front of the easterly tier of lots a street of irregular width, bordering upon the lake, except for the distance of 200 feet at the south end, is delineated on the map and marked "Michigan Avenue." The map is certified by the canal commissioners under date of June 13, 1836, and appears to have been acknowledged by them before a justice of the Supreme Court June 10, 1836. It is also certified by one Edward B. Talcott, who describes himself as "Assistant Engineer in the employment of Commissioners of Illinois and Michigan Canal," under date of June 13, 1836, and was filed for record in the county recorder's office July 20, 1836.

A statute of Illinois (approved February 27, 1833) was then in force providing for the recording of town plats, by which it was enacted, that whenever any county commissioners or other persons wished to lay out a town, or an addition or subdivision of outlots, they should cause the same to be surveyed and a plat or map thereof to be made by the county

surveyor, which should "particularly describe and set forth all "the streets, alleys, commons or public grounds, and all in and "out lots or fractional lots, within, adjoining or adjacent to said "town, giving the names, widths, corners, boundaries and extent "of all such streets and alleys." The statute required that the map should be certified by the surveyor and acknowledged by the county commissioners or other persons making the subdivision before a justice of the supreme court, a justice of a circuit court, or a justice of the peace in the county in which the land lay, whose certificate of acknowledgment should be endorsed on the map; and that the map with the certificates of the surveyor and of acknowledgment should be recorded. It was further provided that every donation or grant to the public, or any individual, religious society, or corporation, marked or noted as such on the map or plat, "when made out, certified, acknowledged and recorded as required by this act," should "be deemed in law and in equity a sufficient conveyance to "vest the fee simple title of all such parcel or parcels of land as "are therein expressed, and shall be considered to all intents "and purposes as a general warranty against such donor or "donors, their heirs and representatives, to the said donee or "donees, grantee or grantees, for his, her or their use, for the "uses and purposes therein named, expressed or intended, and "for no other use or purpose whatever. And the land intended "to be for streets, alleys, ways, commons, or other public uses, "in any town or city, or addition thereto, shall be held in the "corporate name thereof, in trust to and for the uses and pur-"poses set forth, and expressed or intended." (Rev. Stat. 1833, 599; Rec., 533-4.)

The original town of Chicago was laid out by the canal commissioners August 4, 1830 (Rec., 334), and upon the organization of Cook County, January 15, 1831, was made the county seat. (Laws 1831, 54.) The town was afterwards incorporated by an Act of the legislature approved February 11, 1835, with boundaries which included fractional sections ten and fifteen in township thirty-nine north, range fourteen east of the third principal meridian; but the authority of the board of trustees was not to be extended over the south fraction of section ten until the same should cease to be occupied by the United States. (Rec., 334-5; Laws 1835, 204.)

It is alleged in the information and cross-bill and admitted in the answers to both, that all the town lots in Fractional

Section Fifteen Addition were sold by the canal commissioners as laid out on the plat (Rec., 127, 78, 99, 111, 146, 154); and it is proved that they were sold at public sale and with reference to the plat. The lots on Michigan avenue were sold for two or three, or perhaps four times as much as the other lots, because they fronted upon the lake and that wide street. (Rec., 248, 443.)

By an Act of the legislature approved February 21, 1843, the Governor of the State was authorized to negotiate a loan for the completion of the canal, on the pledge of the canal and all remaining lands and lots belonging to the canal fund. The Act provided for the appointment of a board of trustees, who should possess all the powers and perform all the duties previously conferred upon the board of canal commissioners. To secure the payment of the loan a grant was made to the board of trustees by the tenth section in the following terms: "The State does hereby irrevocably grant to the said board "of trustees of the Illinois and Michigan Canal the bed of the "said Illinois and Michigan Canal, and the land over which "the same passes, . . . and also *all the remaining lands "and lots belonging to the said canal fund*, or which hereafter "may be given, granted or donated by the General Govern- "ment to the State to aid in the construction of the said canal, "and the buildings and erections belonging to the State "thereon situated; said board of trustees to have, hold, pos- "sess and enjoy the same as fully and as absolutely in all "respects as the State now can or hereafter could do, for the "uses, purposes and trusts hereinafter mentioned; but it is to "be understood that all canal lands and lots heretofore sold by "the board of commissioners upon which moneys are now due "or may hereafter become due, whether the said lands and "lots be now forfeited or relinquished, or hereafter become "forfeited or relinquished, shall be exempt from the aforesaid "provisions of this Act."

The Act then goes on to authorize the board of trustees to take possession of the granted property, and to proceed to complete the canal. Power is conferred upon the trustees to sell the canal lands and apply the proceeds to the payment of the securities held by the subscribers to the loan, and the expenses incident to the execution of the trust. And by the nineteenth section it was provided, that "whenever the trust "created by this Act shall have been fully executed and per-

" formed by the said trustees, the said canal and the canal " property that may then remain shall revert to the State, and " the State hereby reserves the right of paying off the bonds " and certificates to be paid to the said trustees and the inci- " dental expenses paid by them and the interest thereon; and " the said trustees shall then resign the said canal and the re- " maining canal property and assets to the State." (Rec., 599–606.)

By a supplemental Act, approved March 1, 1845, it was provided, that after the completion of the loan the Governor of the State should execute and deliver under the seal of the State a deed to the said trustees of all the property and effects mentioned in the tenth section of the Act of February 21, 1843 " which said conveyance shall include the lands and lots remaining unsold donated by the United States to the State of Illinois, to aid in the completion of the said canal, to be held in trust as in the said Act stipulated." (Rec., 606–7.)

Pursuant to the provisions of the last mentioned Act a deed was made by the Governor to the canal trustees June 26, 1845, in which the Acts of 1843 and 1845 were recited at length, conveying to them and their successors in trust the bed of the canal and the land over which the same passes, with all the hereditaments and appurtenances thereto belonging, " and " all the remaining lands and lots belonging to the canal fund " or which hereafter may be given, granted or donated by the " General Government to the State to aid in the construction " of the said canal, and the buildings and erections belonging " to the State thereon situated; also the lands and lots " remaining unsold donated by the United States to the " State of Illinois to aid in the completion of the said " canal; to have, hold, possess and enjoy the premises afore- " said to them, . . . as trustees of the Illinois and " Michigan Canal as aforesaid, and their successors in trust, " as in the above recited Acts stipulated, and to and for the " uses and purposes in said Acts expressed and intended. And " so to have, hold and enjoy the said property, with the rights " of controlling, managing, selling and disposing of the same, " and subject to all the duties and obligations as they are set " forth in the said Acts of the General Assembly, until from the " proceeds of the said property, and the revenues of the sa d " canal, after it shall be completed, all the moneys to be paid, " and trusts performed by the said trustees, as specified in the

"said Acts, shall be fully paid, performed, satisfied and ex-
"tinguished, together with all just and necessary charges
"and expenditures incurred and to be incurred in carrying
"on the work and business of the said trust." (Rec., 264, 266.)

The canal debt was extinguished in 1871; and pursuant to an Act of the legislature entitled "An Act to settle up and close the trust of the board of trustees of the Illinois and Michigan Canal," approved April 22d of that year (Rec., 608-9), the board of trustees by deed dated August 19, 1871 released and transferred to the State all the remaining property and assets belonging to the trust. (Rec., 276–7.)

By an Act amendatory of the charter of the City of Chicago, approved February 18, 1861, it was, among other things, provided as follows:

"SEC. 64. No encroachment shall be made upon the land
"or water west of a line mentioned in the second section of
"an ordinance concerning the Illinois Central railroad (which
"line is 'not less than four hundred feet east from the west
"line of Michigan Avenue, and parallel thereto'), by any
"railroad company; nor shall any cars, locomotives, engines,
"machines, or other things belonging to any railroad or trans-
"portation company be permitted to occupy the same; nor
"shall any cars or machinery be left standing upon said track
"fronting any part of Michigan avenue; nor shall the city
"council ever allow any encroachments west of the line above
"described. And any person, being the owner of or interested
"in any lot or part of a lot fronting on Michigan avenue,
"shall have the right to enjoin said company, and all other
"persons and corporations from any violation of the provisions
"of this section or of *said ordinance*, and by bill or petition
"in chancery, in his or their own name, or otherwise, *enforce*
"*the provisions of said ordinance*, and of this section, and re-
"cover such damages for any such encroachment or viola-
"tion, as the court shall deem just—the State of Illinois, by
"its canal commissioners, having declared that the public
"ground east of said lots should forever remain open and
"vacant. Neither the common council of the City of Chi-
"cago, nor any other authority, shall ever have the power to
"permit encroachments thereon, without the consent of all the
"persons owning lots or land on said street or avenue."
(Priv. Laws 1861, 136; Rec., 544–5.)

On the revision of the city charter in 1863, the same provision was re-enacted, with this amendment: after the words, "nor shall any cars or machinery be left standing upon said track fronting any part of Michigan avenue," the words, "south of Madison street," were inserted. (Priv. Laws 1863, 96; Rec., 547.)

Fort Dearborn Addition to Chicago. That part of the public ground above referred to north of the center line of Madison street extended, is embraced within another local subdivision known as "Fort Dearborn Addition to Chicago." This is a subdivision made in 1839 (the Act of February 27, 1833, providing for the recording of town plats being then still in force), of that part of fractional section 10 in township 39 north, range 14 east of the third principal meridian, which lies on the south side of the Chicago river. A military post called Fort Dearborn was established on this tract of land by the United States in 1804, and was afterwards occupied by the troops of the United States until 1836 or later. On the first of October 1824, the land was formally reserved from sale, for military purposes, by the Commissioner of the General Land Office, upon the written request of the Secretary of War. In 1839, the land being no longer needed for military purposes, the entire tract was subdivided into town lots, streets, alleys and public grounds, by authority of the Secretary of War under the direction of the President of the United States. (Rec., 281.) The map of the subdivision, which has been put in evidence, is styled "Fort Dearborn Addition to Chicago." (Rec., 332, *1200*.) It is certified by the county surveyor, and was acknowledged June 7, 1839, before a justice of the peace, by an agent of the War Department. The certificate of acknowledgment reads as follows:

"State of Illinois, }
"County of Cook. }

"Be it remembered that on this seventh day of June in the "year of our Lord one thousand eight hundred and thirty-"nine, before me, Henry Brown, a justice of the peace in and "for said county, came Matthew Birchard, Solicitor of the "General Land Office and agent of the War Department of "the United States, to me personally known, and exhibited a "power of attorney from the Secretary of the Department of "War of the United States, executed officially by said Secre-"tary under the seal of said Department by direction of the

"President of the United States, authorizing him, the said "Matthew Birchard, to cause to be surveyed, platted, duly "acknowledged and recorded as an addition to the town of "Chicago, Illinois, the south-west fractional quarter of Section "10, heretofore reserved for military purposes and the site of "Fort Dearborn, and the same to sell, &c., and acknowledged "the foregoing map to be the map and plat of the Fort Dear-"born Addition to the town of Chicago, and that the United "States of America are the sole proprietors and owners of the "same.

"HENRY BROWN, Justice of the Peace."

The map was filed for record in the recorder's office of the county, June 7, 1839. (Rec., 430.) All the lots in the subdivision were afterwards sold by the Government as shown upon the plat (Rec., 281); but a portion of the property, consisting of block 1, lots 8, 9 and 10, in block 2, lots 1, 2, 3, 5, 6 and 9 in block 4, and lots 1, 2, 3, 4 and 5 in block 5, (including the adjacent streets between them), was reserved from sale until after the decision of the Supreme Court of the United States, at the January term 1849, in the case of the *United States* v. *the City of Chicago*, 7 How., 185. The reserved lots were then sold and Michigan avenue was extended through to River street. (Rec., 430.)

It will be seen on looking at the plat that Lake Michigan is the eastern boundary of the subdivision. The southern boundary is Madison street. Between Randolph street and Madison street a parcel of ground irregular in shape, lying east of blocks 12 and 15 and between them and the lake, is delineated on the plat, across which are written the words: "Public ground forever to remain vacant of buildings"; and in an explanatory statement written on the margin of the plat and signed by Mr. Birchard as agent and attorney for the Secretary of War there is this declaration: "The public ground between Randolph and Madison streets and fronting upon Lake Michigan, is not to be occupied with buildings of any description."

Mr. Birchard's instructions are set out at length in a decision made by the Hon. Carl Schurz, Secretary of the Interior, February 28, 1879, in a land case before him on appeal from the Commissioner of the General Land Office, which has been put in evidence. (Rec., 338—9.) It appears that Mr. Birchard had express authority to make and record the plat,

and to make sales of the lots, reserving, however, such quantity of land as he might think it necessary to retain for the use of the light-house. The sales made were subsequently confirmed, and the purchasers in due time received their patents for the lots purchased. (Rec. 340.)

The authority of the Secretary of War to cause the property to be sold is not questioned. The Act of Congress, approved March 3, 1819, entitled "An act authorizing the sale of certain military sites," provides as follows:

"That the Secretary of War be, and he is hereby authorized, under the direction of the President of the United States, to cause to be sold such military sites belonging to the United States as may have been found or become useless for military purposes. And the Secretary of War is hereby authorized, on the payment of the consideration agreed for into the treasury of the United States, to make, execute and deliver all needful instruments, conveying and transferring the same in fee; and the jurisdiction which had been specially ceded for military purposes to the United States over such site or sites shall thereafter cease." (3 U. S. Stat. at Large, 520; Rec., 551.)

No attempt has ever been made by the United States to disturb the titles to lots in Fort Dearborn Addition, derived through deeds made to purchasers by the Secretary of War. On the contrary, the survey and plat of the subdivision has been recognized as valid by an Act of Congress, in which also certain lands in the subdivision which had been conveyed by the Secretary of War to the Illinois Central Railroad Company, are referred to as "lands granted by the United States." ("Act for the relief of Jean Baptiste Beaubien," approved August 1, 1854. 10 U. S. Stat. at Large, 805; Rec., 550–1.)

The evidence shows that the land marked "Public Ground" on the plat, lying between Randolph and Madison streets, has been devoted to public use since the making and recording of the plat (Rec., 246-7, 269); and that between 1840 and 1852 considerable sums were expended by the city in protecting it from the lake. (Rec., 268–272.) In 1847 an ordinance was passed by the common council providing that the public ground east of Michigan avenue between Randolph street and Park Row should thereafter be known as Lake Park (Rec., 269); and it also appears that between 1866 and

1886 the sum of $174,065.54 was expended by the city for fencing the park and making other improvements thereon. (Rec., 275-6).

When the railroad was located in 1852 nearly all the land contiguous to the lake between Randolph street and the river was owned by private individuals. A small parcel adjacent to the river still belonged to the United States. This parcel, embracing parts of lots 1 to 5, block 5, Fort Dearborn Addition, was purchased by the Railroad Company. The deed executed by the Secretary of War, under date of October 14, 1852, conveying the property to the company "together with all the accretions made or to be made by said lake and river in front of the land hereby conveyed, and all other rights and privileges appertaining to the United States as owners of said land," was put in evidence. (Rec., 300, 430.)

The title to all the remaining lots on the shore between Randolph street and the river was acquired by the Railroad Company at about the same time. (Rec., testimony of J. Y. Scammon, 291--2.) The original deeds conveying the property to the Company were put in evidence, and an abstract of them, by consent of counsel, was made a part of the record. (Rec., 301–308.) These conveyances, it is proved, cover all the lots bordering the lake between Randolph street and the river. (Rec., 428.)

It also appears that the Railroad Company acquired title to all the land on the lake shore between Park Row and Sixteenth street. Part of this land was acquired in the first instance by condemnation, but deeds of the lands condemned were afterwards procured, with the exception of one small parcel. (Rec., 308–331, 429.)

The Railroad Company having purchased all the lots bounded by the lake, between Randolph street and the river, it gradually pushed its works out into the shallow water in front of the lots until they reached the exterior line specified in the third section of the ordinance of June 14, 1852, before referred to, and here the station grounds of the company were located.

By an ordinance passed by the common council of Chicago September 10, 1855, permission was granted to the Railroad Company to curve the tracks leading to its passenger station westwardly of the line fixed by the ordinance of 1852 (a line

400 feet east of the west line of Michigan Avenue), "so as "to cross said line at a point not more than two hundred feet "south of Randolph street, extending and curving said tracks "north-westerly as they approach the depot, and crossing the "north line of Randolph street extended at a point not more "than one hundred feet west of the line fixed by the ordinance "aforesaid." (Rec., 296, 631.)

The ordinance was accepted by the Company, September 11, 1855 (Rec., 633); and the small triangular piece of ground therein described has since been occupied by its tracks. It was needed to obtain convenient access to the passenger station. This appears from the preamble prefixed to the ordinance; also from the testimony. (Rec., testimony of E. T. Jeffery, 369.)

In consideration of the permission thus granted, the Railroad Company was required to lay out upon its own land a street fifty feet wide, west of and alongside its passenger house, extending from Water street to Randolph street. It is proved that this street was laid out and dedicated to public use by the Company in conformity to that requirement. (Rec., testimony of L. P. Morehouse, 348; E. T. Jeffery, 372.)

By a subsequent ordinance, passed September 15, 1856, permission was granted to the Company to enter upon and use in perpetuity an additional piece of ground at the north end and on the east side of the strip three hundred feet wide described in the ordinance of 1852, in order to afford convenient means of approaching and using a part of the station grounds between Randolph street and the river. (Rec., 296, 633-4.) It appears from the recitals in the ordinance that the original strip was too narrow for this purpose; and it is shown by the testimony that the additional area which the Company was thus permitted to occupy is absolutely essential to the convenient operation of its railroad. (Rec., testimony of E. T. Jeffery, 368.)

The two parcels of ground last referred to were covered by water in 1852 when the railroad was laid out (Rec., 283); and it appears from the plat of Fort Dearborn Addition that they were under water in 1839 when that plat was made and recorded. (Rec., 1200.) It is stated in the information that these grounds are used by the Railroad Company "for the "purpose of operating its said railroad within the limits of said "city." (Rec., 135.)

On the 16th of April, 1869, an Act was passed by the Legislature of Illinois, entitled "An Act in relation to a portion of the submerged lands and Lake Park Grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the City of Chicago."

The third section of this Act provides as follows:

"Section 3. The right of the Illinois Central Railroad Com-
"pany, under the grant from the State in its charter, which
"said grant constitutes a part of the consideration for which the
"said company pays to the State at least seven per cent. of its
"gross earnings, and under and by virtue of its appropriation,
"occupancy, use and control, and the riparian ownership
"incident to such grant, appropriation, occupancy, use and
"control in and to the lands submerged or otherwise lying
"east of the said line running parallel with and four
"hundred feet east of the west line of Michigan avenue,
"in fractional sections ten (10) and fifteen (15), township and
"range as aforesaid, is hereby confirmed; and all the right
"and title of the State of Illinois, in and to the submerged
"lands constituting the bed of Lake Michigan, and lying east
"of the tracks and breakwater of the Illinois Central Rail-
"road Company, for the distance of one mile, and between
"the south line of the south pier extended eastwardly and a
"line extended eastward from the south line of lot twenty-one,
"south of and near to the round-house and machine shops of
"said company, in the south division of the said city of Chi-
"cago, are hereby granted, in fee, to the said Illinois Central
"Railroad Company, its successors and assigns: *Provided*,
"*however*, that the fee to said lands shall be held by said com-
"pany in perpetuity, and that the said company shall not have
"power to grant, sell or convey the fee to the same, and that
"all gross receipts from use, profits, leases or otherwise of said
"lands or the improvements thereon, or that may hereafter be
"made thereon, shall form a part of the gross proceeds, re-
"ceipts and income of the said Illinois Central Railroad Com-
"pany upon which said company shall forever pay into the
"state treasury, semi-annually, the per centum provided for in
"its charter, in accordance with the requirements of said
"charter: *And provided, also*, that nothing herein contained
"shall authorize obstructions to the Chicago harbor, or impair
"the public right of navigation, nor shall this Act be construed
"to exempt the Illinois Central Railroad Company, its lessees

" or assigns, from any Act of the general assembly which " may be hereafter passed regulating the rates of wharfage " and dockage to be charged in said harbor: *And provided*, " *further*, that any of the lands hereby granted to the Illinois " Central Railroad Company, and the improvements now or " which may hereafter be on the same, which shall hereafter be " leased by said Illinois Central Railroad Company to any per- " son or corporation, or which may hereafter be occupied by any " person or corporation other than said Illinois Central Rail- " road Company, shall not, during the continuance of such " leasehold estate or of such occupancy, be exempt from mu- " nicipal or other taxation." (Laws 1869, 245-8; Rec., 634–7.)

By this Act, the right of the Railroad Company to all the lands it had appropriated and occupied, lying east of a line drawn parallel to and four hundred feet east of the west line of Michigan avenue in fractional sections ten and fifteen, was confirmed; and a further grant was made to the Company of the submerged lands lying east of its tracks and breakwater within the distance of one mile therefrom, between the south line of the south pier extended eastwardly and a line extended eastward from the south line of lot twenty-one.

The line of the Company's breakwater at that time, and the situation of lot 21, are shown upon one of the maps introduced in evidence, known as the " Morehouse Map," (Rec., 346; 347, *1,201*), a copy of which on a reduced scale is here inserted. The map also gives an accurate representation of the Railroad Company's works along the shore of the lake between the river and Sixteenth street. The Railroad Company or its lessees had possession, at the time of the passage of the Act, of all the land north of Randolph street between the east line of Central avenue and the breakwater indicated by the exterior red line on the map, including the slip and pier there marked " C "; and of all the land below Randolph street, as far south as 16th street, between the breakwater and the west line of the railway. (Rec., 347, 348, 353, 354.)

It will be noticed that the Company had not occupied the whole of the strip 300 feet wide designated for its use by the ordinance of June 14, 1852. From a point about midway between Washington street and Madison street to Park Row, the east 100 feet of the strip was outside the breakwater.

There were two further grants made by the State in the Act of April 16, 1869: One to the City of Chicago, of all the

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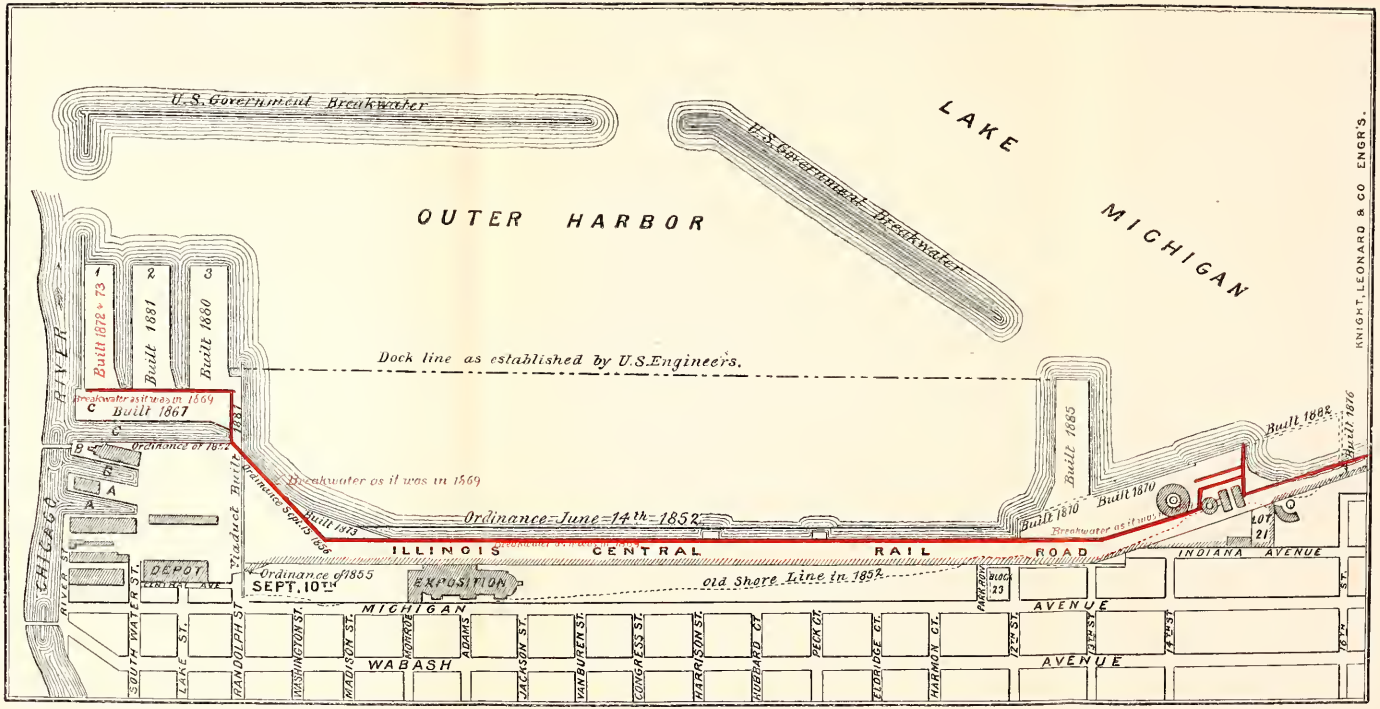
THE MOREHOUSE MAP

Scale : 1000 ft = 1 in.



right, title and interest of the State in and to that part of the public ground between Michigan avenue and the railroad which lies between Park Row and the south line of Monroe street; the other to the Illinois Central, Chicago, Burlington and Quincy, and Michigan Central Railroad Companies, jointly, of all the right and title of the State in and to that part of the public ground east of Michigan avenue lying between the south line of Monroe street and the south line of Randolph street, for the erection thereon of a passenger depot. In consideration of the latter grant the three railroad companies were required to pay $800,000 to the City of Chicago—$200,000 within three months from the passage of the Act, and three similar installments within six, nine and twelve months from the same date. The common council was empowered to quitclaim and release to those companies any claim the city might have on the land by reason of any expenditures and improvements made thereon, or otherwise, and in case of neglect or refusal to make such quitclaim and release within four months from the passage of the Act the grantees were to be discharged from all obligation to pay the balance of the $800,000 then remaining unpaid.

No question arises in this case in respect of either of the grants last mentioned. They have, therefore, at most, only a remote, incidental bearing upon the matters here in controversy. Proof has been made, however, of the fact, that the three railroad companies interested in the grant made of the land north of Monroe street tendered the first installment of the $800,000 they were required to pay the city, to the city comptroller on the 12th day of July, 1869. The comptroller accepted the money and reported the payment to the common council, stating in his report that, as he had received no instructions from the council on the subject, he had taken the money upon the condition that no rights of the city should be thereby waived or its interests in any manner prejudiced. It was further stated in his report, that he had not placed the money in the city treasury, but in a bank on special deposit, and that he awaited the direction and action of the council in the premises. The comptroller's communication was referred to a committee, and no definite action was taken by the council on the subject until June 13, 1870, when a resolution was passed that the city would not recognize the act of the comptroller in receiving the money as binding upon the city, nor "receive any money from the railroad corporations under said

"Act of the General Assembly until forced to do so by the "courts." No conveyance or release was made by the city to the three railroad companies, or either of them, of its interest in the property; and no further tender of money was made by the railroad companies to the city. The comptroller, at the expiration of his term of office, did not turn over the $200,000 to his successor, but kept it deposited in a bank to his own individual credit until 1874, or later, when on the application of the railroad companies the money was returned to them. (Rec., 522–532.)

The grants made to the Illinois Central Railroad Company by the Act of April 16, 1869, were formally accepted by the Company on the 6th day of July, 1870. At a meeting of its board of directors held on that day in the City of New York, the following resolution was unanimously adopted:

"*Resolved*, That this company accepts the grants under the "Act of the Legislature of Illinois at its last session, and that "the president give notice thereof to the State, and that the "company has commenced work upon the shore of the lake "at Chicago, under the grants referred to."

On the 17th of November 1870, the following letter was sent by the president of the company to the Secretary of State:

"CHICAGO, November 17, 1870.

"*Hon. Edward Rummel, Secretary of the State of Illinois,*
"*Springfield, Illinois.*

"SIR: At a meeting of the board of directors of the Illinois "Central Railroad Company held at the company's office in "New York the 6th day of July 1870, it was resolved that "this company accepts the grants under the Act of the Legis"lature of Illinois at its last session, and that the president give "notice thereof to the State, and that the company has com"menced work upon the shore of the lake at Chicago under "the grants referred to.

"In accordance with the above resolution I hereby give you "notice that this company accepts the grants above referred "to and more particularly mentioned and described in an Act "in force April 16, A. D. 1869, and entitled 'An Act in "'relation to a portion of the submerged lands and Lake "'Park grounds lying on and adjacent to the shore of Lake "'Michigan, on the eastern frontage of the city of Chicago'.

"I also give you notice that this company has commenced "work on the improvement of said lake shore.

"You will please regard the above as an acceptance by this "company of the above mentioned law, and it is desired by "said company that said acceptance shall remain permanently "on file and of record in your office.

"Please acknowledge receipt hereof, and oblige,
"Yours very truly,
"JOHN M. DOUGLAS,
"*President.*"

The receipt of the letter was acknowledged by the Secretary of State on the 18th of the same month, by an official communication, as follows:

"STATE OF ILLINOIS, SECRETARY'S OFFICE.
SPRINGFIELD, NOV. 18, 1870.

"*Hon. John M. Douglas, Pres. Ill. Central R. R. Co., Chi-*
"*cago, Ill.*

"DEAR SIR: Yours of the 17th inst., being a notice of the "acceptance by the Illinois Central Railroad Company of the "grants under an Act of the legislature of Illinois, in force "April 16, 1869, was this day received and filed, and duly "recorded in the records of this office.
"Very respectfully,
"EDWARD RUMMEL,
"*Secretary of State.*"

At the next annual meeting of the stockholders of the Company, held at Chicago on the 31st of May 1871, the following action was taken:

"The minutes of the meetings of the board of directors "held since the last annual meeting of the shareholders [held "at Chicago on the 25th of May 1870], were submitted, and "the following resolution adopted:

"*Resolved*, That the acts and doings, resolutions and votes "of the board of directors, all and singular, are hereby ratified, "approved and confirmed." (Rec., 297–300, 638.)

The Act of April 16, 1869, was passed before any provision had been made by Congress for the construction of the outer harbor; but by an act of Congress approved July 11, 1870,

an appropriation of $100,000 was made "for enlargement of harbor facilities at Chicago, Illinois, according to the plans of the engineering department, and for a harbor of refuge, $50,000 "—"to be expended under the direction and superintendence of the Secretary of War, according to such plans as shall be by him first selected and approved." (16 U. S. Stat. at Large, 223, 226.)

In May 1869, immediately after the passage of the Act of April 16th of that year, and more than twelve months before the above mentioned appropriation was made by Congress, the Illinois Central Railroad Company caused a plan to be prepared for the construction of piers or wharves in front of its works between the mouth of the river and the north line of lot 21. A series of wharves with intervening slips was contemplated, to be extended into the lake to the distance of 2420 feet from the line of the shore between Madison street and Park Row. The wharves were intended to be 600 feet wide, and the slips between them 150 feet. The plan also embraced the construction of a breakwater in front of the wharves, at a distance beyond them of 400 feet. The drawing made at the time showing the general plan of the proposed wharves has been put in evidence (Record, 350, 1202). The probable cost of the whole work is estimated at about $6,500,000. (Rec., 440-1.)

The plan, as a whole, did not meet with the approval of the Government, and in consequence of its action only a comparatively small part of the plan was carried into execution. (Rec., 350–1.) Work was commenced upon one of the proposed wharves adjacent to the river, early in the autumn of 1869 apparently, but the work was interrupted on the 3rd of July 1871 by an injunction granted by the circuit court of the United States, upon an information filed by the United States attorney for the Northern District of Illinois. The substantial ground of complaint was, that an appropriation had been made by Congress and plans had been prepared by the engineering department of the United States for the construction of an outer harbor, and that the works contemplated by the Railroad Company would interfere with those plans and obstruct navigation. (Rec., 299, 638 – 640.) A preliminary injunction was granted, but the suit never came to a final hearing.

On the 3d of August 1871 a board of engineer officers ap-

pointed by the Secretary of War was directed to assemble in Chicago on the 6th of that month or as soon thereafter as practicable, to "take into consideration the plans submitted by "the Illinois Central Railroad Company for docks or wharves "in the basin now (then) being formed by the construction of "the United States breakwater, to report their views thereon, "and to establish the limiting lines for such constructions in "that basin, reference being had to the interests of commerce "and navigation." (Rec., 642 – 3.)

The report of the board was transmitted to the Secretary September 29, 1871, in which it was recommended that a line be established in the harbor beyond which no wharves or other structures should extend. The limit suggested by the board was a line parallel to the Government breakwater, 1,200 feet west of it on the north side of Randolph street, and 2,000 feet west of it on the south side of that street.

The plan of wharves submitted by the Illinois Central Railroad Company was deemed in part objectionable, because the wharves proposed to be built south of Randolph street were designed to extend 800 feet beyond the limit recommended, and also because the spaces between the slips were too wide—the room for vessels being thereby unnecessarily diminished. The board was also of opinion that, as the question of ownership of the land on the shore south of Randolph steet was in dispute, no piers should be allowed to be built there until the controversy should be settled. North of Randolph street there was no dispute as to the ownership of the Illinois Central Railroad Company, nor any opposition to building wharves there; but south of that street there were strong objections on the part of the city authorities and others whose interests were affected. So much of the plan submitted by the Railroad Company as related to wharves north of Randolph street was approved; but the board recommended that the construction of wharves south of Randolph street should not be authorized until all questions of right along the lake shore had been disposed of, nor until the plans for them should be approved by the Secretary of War. (Rec., 642–646.)

The report was approved by the Secretary of War October 4, 1871 (Rec., 642), and on the 16th of January 1872 an agreement was made for the dismissal or suspension of the suit which had been commenced by the United States district

attorney in July previous. On that day a stipulation was filed setting forth that the matters presented in the information relating to the construction of docks and wharves in the outer harbor, formed by the breakwater then in process of erection by the Government of the United States, had been referred to the War Department, and had been considered and reported upon by engineer officers appointed by the Secretary of War for that purpose; that the harbor lines limiting the construction of docks and wharves in said outer harbor, as recommended by the engineer officers, had been approved by the Secretary of War, and the lines so established fixed as the lines to which docks and wharves might be extended by parties entitled to construct them. The stipulation then concludes as follows:

"And the said defendant being desirous of proceeding with "the construction of docks and wharves within said outer har- "bor, between the pier aforesaid on the south side of the en- "trance to the Chicago river and the north line of Randolph "street aforesaid extended eastwardly, in conformity with "the limiting harbor lines so fixed and established as afore- "said, and under the supervision of the Engineer Bureau of "the United States Government, and having agreed and "hereby expressly stipulating to conform to and observe the "plan of limiting harbor lines so recommended and approved "as aforesaid, as well as the directions which may be given in "reference to the proper construction of said docks and "wharves by the proper officers of the Engineer Bureau of "the United States.

"It is thereupon and in consideration of the premises stip- "ulated and agreed, that the injunctional order heretofore made "and entered of record in this cause, by agreement of the par- "ties, be set aside and vacated, and the information herein "dismissed, with leave to the said complainant to reinstate the "same whenever the said defendant shall fail or refuse to con- "form to the limiting harbor lines so established as aforesaid "and the directions of the proper engineer officer of the United "States in charge of the construction of docks and wharves in "the said outer harbor, or any part thereof." (Rec., 640–1.)

On the filing of this stipulation the injunction was dissolved, and the Railroad Company resumed the construction of pier No. 1 adjacent to the river and east of the breakwater of 1869.

The work on this pier appears to have been commenced after the passage of the Act of April 16, 1869, and to have been completed in 1873. During the same period a large part of the triangular space outside the breakwater of 1869, north of the south line of Monroe street, marked on the map "Built "1873," was filled with earth. There was also considerable filling done outside the breakwater near the foot of Fourteenth street, and an engine-house was constructed on the newly made land. A new line of breakwater between Twelfth street and Fourteenth street was built in the year 1870, as indicated on the map. This structure consisted of cribs made of timber, which were sunk in the lake loaded with stone. Between April 1869 and April 1873 more than $200,000 was expended by the Company upon these constructions. (Rec., 349–50, 355.)

On the 15th of April 1873, the Act of April 16, 1869 above referred to was repealed. (Rec., 609.) It is not pretended that the Illinois Central Railroad Company has ever assented in any way to the repealing Act, or that it is estopped by acquiescence or otherwise from asserting the rights and title vested in it under the Act of 1869.

The improvements, begun upon the granted lands before the repeal and not then completed, were prosecuted to completion afterwards; and between the date of the repealing Act and the commencement of this suit new works of considerable magnitude were undertaken and finished. In 1880 and 1881 piers 2 and 3 shown upon the Morehouse map were built north of Randolph street, in conformity to plans approved by the War Department. (Rec., 351, 370–1.) A copy of the tracing exhibiting the plan of these piers, and the correspondence between the engineer officers of the Government and the superintendent of the Railroad Company on the subject, have been introduced in evidence. (Rec., 352–3, 1,203.) The narrow strip of ground south of and adjacent to slip C and pier C was enclosed and filled in 1881 (Rec., 371); and an iron bridge or viaduct 1,760 feet or more in length was constructed the same year, extending from the foot of Randolph street over the railroad tracks to the base of pier 3. The viaduct was needed to make the new piers accessible to the public, and authority to construct it was given by an ordinance of the city council passed July 12, 1880. (Rec., 299, 372, 646–7.) This ordinance provided for the extension of Randolph street

to the lake, and required that the cost of building and maintaining the viaduct and keeping it in repair should be borne by the Railroad Company, and that "the right to the use of the said bridge or viaduct shall be forever free to the public and to all persons having occasion to pass and repass thereon."

In 1882 the pier which had been built in 1870 extending from the foot of Twelfth street to a prolongation of the north line of Lot 21, was continued south to the center line of Sixteenth street extended. The old breakwater which was built in 1852 had become dilapitated, and experience had shown the necessity of having this protection placed at a greater distance from the railroad tracks. By the ordinance of 1852 the Company was required to erect and forever maintain a continuous line of pier work outside of its tracks of sufficient strength and magnitude to protect the shore from further damage from the lake. South of Lake Park this work was to be placed at such distance outside of the tracks "as may be expedient." The principal object of the new pier was to protect the railway tracks from injury by the waves during violent storms coming from the north-east. Another object was the construction of a slip between the breakwater and the shore, where vessels laden with materials for the Company's use or having freight to be handled, could enter and lie in safety. (Rec., 376–7.)

The large wharf shown on the Morehouse map at the foot of Thirteenth street was built in 1885. The plan was referred to the War Department and approved. As the new outer harbor was not then protected in any way from southerly and south-easterly storms, it was suggested by the resident officer of engineers in charge of the harbor that the wharf would be of advantage to shipping by intercepting the seas coming from a southerly direction; it was also required for the proper accommodation of the company's traffic. (Rec., 372–375.)

The outlay upon these different works between April 16, 1869 and April 1, 1887, appears to have been about $810,000, of which sum $200,000 and upwards was expended before April 15, 1873. (Rec,, 350, 352.) The whole amount expended on the Company's works along the lake shore since 1852, according to a careful estimate made by one of its officials, is upwards of $3,000,000. (Rec., 379–80.)

That the works are necessary in the strictest sense for the complete operation of the railroad, is conclusively established by the evidence. (Rec., testimony of E. T. Jeffery, 368, 375–379, 387; Clarence Buckingham, 483–495; George W. Cushing, 495–500; W. C. Garloch, 507–515.) On this point there is no conflict of testimony. That they have caused any obstruction to navigation or any detriment to the commercial interests, is not alleged in the information, or pretended by anybody.

Before concluding this statement attention should perhaps be called to the action of the War Department in 1881 and 1882, upon an application for permission to enclose and fill the unoccupied part of the strip three hundred feet wide in front of the public ground between Park Row and Randolph street, which the Company was authorized to appropriate to its use by the ordinance of June 14, 1852. The growth of traffic had been such as to require greater trackage accommodations, and the company thought it necessary to take possession of the strip one hundred feet wide, as yet unoccupied, on the east side of the breakwater. With this purpose in view a few piles were driven near Park Row, but the engineer officer in charge of the harbor objected to the work and it was discontinued. (Rec., 380, 390–1.) The matter was then referred to the War Department, and the action of the Department, including all the official correspondence on the subject, has been put in evidence. (Rec., 390–427.) The rights claimed by the Railroad Company are very fully explained in the letter of its Solicitor to the Secretary of War under date of July 25, 1881. (Rec., 397–401.) Attention was called in this communication to the decisions of this court, by which the doctrine is established that the title to land under navigable waters like the Great Lakes is vested in the respective States within which the land is situated; and it was submitted that the United States was in no way concerned in respect to the proposed extension of the Company's works one hundred feet farther into the lake, except so far as it might be important to inquire whether such extension would unnecessarily obstruct the harbor or impair the public right of navigation. The advice of the Attorney General (Benjamin Harris Brewster) was taken by the Secretary of War upon the legal question involved, whose official opinion on the subject is fully disclosed in the following extract from his reply to the Secretary under date of February 6, 1882:

" The question whether the ownership of the soil is in the " company or in the State, or elsewhere (the United States as- " serting no title thereto), appears to me to be unimportant so " far as the General Government is concerned, and the only " inquiry which need be entertained by your Department, is, " whether the construction of the 'dock line' will obstruct, en- " croach upon or interfere with the harbor improvement, and " thus injuriously affect its usefulness in the interest of navi- " gation. If so, it would not only be your duty to withhold " your assent to the prosecution of the work but to direct that " proceedings be taken in the proper court to enjoin the pro- " posed encroachment, should the company persist in going on " therewith. That the United States may avail itself of the " remedy by injunction to protect from injury improvements in " navigable waters made under the authority of Congres, is not " at all doubtful. (*Unted States* v. *Duluth*, 1 Dill., 469.) The " inquiry suggested above, however, being one of *fact*, I can " afford you no aid in determining it. In its consideration the " views of the officers of the Engineer Department, who have " immediate charge of the harbor improvement, are entitled to " very great weight, and will, I doubt not, enable you to reach " a correct conclusion." (Rec., 414.)

Acting upon this advice, the Secretary of War on the 14th of April 1882 approved a recommendation made by the Chief of Engineers, that the inquiry suggested by the Attorney General be submitted to a board of engineer officers, to consist of Gen. John G. Parke, Gen. C. B. Comstock and Gen. Godfrey Weitzel. (Rec., 416.)

The board met at Chicago on the 24th of May 1882, and, after examining the harbor and listening to the suggestions of all who had anything to say on the subject, submitted to the Secretary of War June 12, 1882 a report in writing, in which the conclusions they had reached were stated substantially as follows: The outer harbor can be made of the greatest advantage to the general commerce of the country and of Chicago only by the construction within it of wharves or docks, with intervening slips of suitable width and length, which should be fixed by a board of engineer officers specially convened for that purpose. In order that the heavy freights, especially grain, coal and lumber, may be moved with the greatest facility, elevators, cars and vessels must lie side by side. To develop the full value of the harbor railroad tracks

must therefore run down the piers. It is only in this way, by numerous piers with railroad tracks upon them connec ing immediately with railways, that the full benefits of the harbor to navigation and commerce can be obtained, and the large sum spent by the United States in constructing it can produce its designed result. The present right of way of 200 feet held by the Illinois Central Railroad Company does not give a width sufficient to connect tracks on the piers with those of the present shore line. If they began 200 feet outside of the present shore line suitable curves could be put in. This line should, therefore, be established for that purpose. The strip 100 feet wide next landward of the ends of the piers should be a public highway, and the other strip 100 feet wide between this and the present shore protection should be occupied by the Illinois Central Railroad Company as desired by it. If this plan should be adopted by the Government, a very valuable franchise would be yielded to the railroad company, for which it should furnish some recompense. It should, therefore, be required to make the curved connection between its tracks and those on the wharves, and to haul the cars to and from those wharves at reasonable rates, unless its charter already covers both of those points. It should also be required to build at its own expense viaducts in sufficient numbers and of suitable construction to accommodate the commerce from the streets of the city to the proposed public highway adjacent to and on the other side of its tracks. These viaducts should be permanent structures, and should be promptly built when required by the Secretary of War. In suggesting this plan the question of the ownership of the submerged lands has not been considered, but only what right in the navigable waters of the harbor the government might relinquish in order that it may be of the greatest usefulness to commerce.

In direct answer to the question of fact submitted to the board the report says, "that the proposed extension of the "dock line by the Illinois Central Railroad Company, to which "in our plan, there is no objection, will encroach upon, "obstruct and interfere with the harbor at Chicago, Illinois, "but will not injuriously affect its usefulness in the interest of "navigation if that plan is executed. In our opinion the in-"junction or prohibition by the War Department against the "extension of the dock line by the Illinois Central Railroad "Company should be withdrawn, if this company will first

"furnish good and sufficient guarantee to the Secretary of "War that it will comply with all the requirements demanded "of it in the plan which we have above outlined." In conclusion the board express their concurrence in the report of the board of engineers of 1871, that no piers or wharves should be erected in the outer harbor of Chicago until the plans are approved by the Secretary of War. (Rec., 423-427.)

On the 28th of June 1882 the recommendations of the board were disapproved by the Secretary, for reasons set forth in a written memorandum filed with the report. The reasons assigned were: *First.* That the conditions to be imposed on the railroad company as suggested in the report, were such as under the existing circumstances the War Department had no legal power to make or to enforce. *Second.* That the plan submitted in the report was in fact a plan for the commencement of a system of wharves to be erected upon the submerged land, the title to which was in dispute; that properly the Secretary of War could give no approval to plans for wharves except when submitted by the person or corporation indisputably entitled to build them; that the approval of the plan recommended by the board would be in effect to yield possession to the railroad company, and such action would be, as the Secretary conceived, an assumption of judicial functions by the Department, which it was not proper for it to exercise in such a case. (Rec., 418-423.)

THE PLEADINGS.

The Amended Information. Complainants allege: That the State is invested with complete sovereign and proprietary rights over that part of Lake Michigan which lies within its jurisdiction, subject only to the authority vested in Congress "to regulate commerce with foreign nations and among the "several States."

That the United States has commenced the construction of a harbor in front of fractional sections ten and fifteen in Chicago, having in view simply the erection of outer piers for the protection of shipping, leaving further improvements to be made, in accordance with the general designs of the Government, by the proprietors of the land under water and those having the right and power to make them.

Reference is made to the grant of public lands made by Congress in 1827 in aid of the Illinois and Michigan Canal, and to the various Acts of the State legislature relating to the canal referred to in the foregoing statement. It is alleged that fractional section fifteen was a portion of that grant; that the canal commissioners caused a *part* of the tract to be subdivided on or about June 13, 1836; and made and recorded a plat, and afterwards sold the lots; but that the subdivision was confined to the west part of the fractional section and did not extend east of Michigan avenue as now occupied and used, except for a short distance at the south end where block 23 is situated; that pursuant to the provisions of the legislative Acts of February 21, 1843, and March 1, 1845, a loan of $1,600,000 was subscribed for, and a deed was made by the Governor by which "all the canal lands then remaining unsold" were conveyed to the canal trustees; and it is claimed that under that general description the canal trustees acquired title to all that part of fractional section fifteen which lies east of Michigan avenue, except block 23, and continued seized and possessed of the same until August 19, 1871, when they reconveyed the same to the State. It is insisted that it was not in the power of the State during the intermediate period to grant any part of said land, whether submerged or not, to the Illinois Central Railroad Company.

Reference is made to the Act of Congress of September 20, 1850, by which the grant was made to the State in aid of the construction of the railroad afterwards built by the Illinois Central Railroad Company, and to the legislative Act of February 10, 1851, by which that Company was incorporated; also to the ordinances of the common council of Chicago of June 14, 1852, September 10, 1855, and September 15, 1856, by which consent was given to the location of the railroad within the city, and to the occupation by the Railroad Company of the several parcels of land therein described; and it is alleged that the Company entered upon and is now using the land "for the purpose of operating its said railroad within the limits of said city."

That in 1852, when the Company's breakwater was constructed and its railroad tracks laid, that part of fractional section fifteen occupied by them was, to a considerable extent, covered by the waters of the lake, but was dry ground when the tract was granted to the State; that it had become sub-

merged "by reason of certain artificial causes, and was at all times subject to and easy of reclamation," and was still part and parcel of the land granted to the State, subject to the trusts created by that grant and the Acts of February 21, 1843, and March 1, 1845, before referred to, and could not be used or applied for any other than canal purposes.

Reference is made to the legislative Act of April 16, 1869 referred to in the foregoing statement, and it is alleged that the claims made by the Company under that Act are without foundation. It is insisted that the Act was never passed by the legislature; that, if it was passed, it was inoperative and ineffectual for the purposes claimed, because the Company could not take or hold the land granted, and particularly could not take or hold the submerged land constituting the bed of Lake Michigan; that the legislature had no power to make the grant, and, if it had such power, the Act was invalid "for many reasons, and especially in this, that it was a private and local law, and embraced more than one subject, and embraced several subjects not expressed in the title."

It is further alleged that the Railroad Company had no riparian rights in fractional sections ten and fifteen, and that the Act of April 16, 1869, if otherwise valid, was void under the constitution of Illinois, because it would deprive the owners of land along the shore of the lake in those fractional sections, and among others the trustees at that time of the Illinois and Michigan Canal, of the rights incident to the ownership of land so situated without compensation.

It is alleged that no action was taken by the Railroad Company under the said Act, and that on the 15th of April 1873, the law was repealed; and it is insisted that the repeal had the effect to withdraw and take from the Company any title which may have passed by the repealed statute; that the Company was incapable under its charter of accepting the grant; and the Act was inoperative "by reason of the peculiarity in the terms of the grant, the legislature by such pretended Act purporting to grant the fee to said Railroad Company and by the said pretended Act expressly withholding from said Railroad Company the power to grant, sell or convey the same"; that if the Act had the effect to pass the title to the land granted, "it was a title subject to be resumed by the State which gave it"; that there was no consideration

for the grant, and the object and intention of the legislature in passing the repealing Act was "*to undo what had been done* by "that pretended Act of 1869, to *withdraw* what had been *given* "by that pretended Act, and to *revest* in the State whatever "title had been *divested* thereby."

Complaint is then made, that "the Illinois Central Rail- "road Company after its entrance into the city began a sys- "tem of encroachment upon the domain of the State, the first "indication of which was the procuring of the passage of the "ordinance purporting to grant in perpetuity the two triangu- "lar strips of ground near Randolph street, and which it im- "mediately entered upon, pretending to assume the right of "the city to grant the same, and is now using the same "under the same pretense; that it soon after began filling "with earth that portion of the bed of the lake in front of "fractional section ten north of Randolph street, under "the claim that having acquired the land on the shore "of the lake, the so-called riparian rights enabled it "to advance the shore and its own land into the lake at "its pleasure, or upon some other unfounded assertion of "right, but that this encroachment upon the property belong- "ing to the State was, after it had proceeded to a consider- "able extent, arrested by the action of the United States "in suing out of the circuit court of the United "States for the Northern District of Illinois, an injunction "prohibiting the continuance of the encroachment upon the "waters of the lake, which injunction remained in force until "dissolved by the Railroad Company entering into a stipula- "tion having the substantial effect of the injunction; that the "said Railroad Company not long ago entered upon the bed "of the lake in front of its breakwater and commenced to fill "the same with earth, with the view of using the same for "railroad purposes, and this was done under the claim that "the ordinance of the city above mentioned conferred upon it "the right to use land three hundred feet in width, and that "it was now occupying only two hundred feet in width, but "this encroachment was also prevented by the action of the "officers of the United States, whose request to the Railroad "Company to desist was sufficient, without the necessity of "suing out an injunction; that the said Railroad Company "has begun and is now prosecuting the work of filling with "earth and other materials, that portion of the bed of Lake "Michigan in front of fractional section fifteen, both north and

"south of lot 21, near its round-house, mentioned in said al-
"leged Act of the legislature of Illinois passed in 1869; that it
"is proceeding to sink lines of cribs of earth and stone in the
"lake in front of said section fifteen and enclosing within such
"lines large areas of the lake, which it then fills in with earth
"and other material in order to appropriate the ground so
"made and to use the same for railroad and other purposes;
"that your informant is informed that it justifies or pretends
"to justify such proceedings under the pretended Act of
"1869, so far as they are carried on north of its round-house,
"and by some claim of riparian rights, so far as they are car-
"ried on south of its round-house; that it also asserts that by
"its charter of 1851 it was empowered to use all the land and
"domain of the State which it might ever after need and de-
"sire for railroad purposes, while the truth and fact is that it
"has long ago made the location of its road and, as your in-
"formant believes, has caused the same to be recorded in the
"proper offices as the law requires, and its power to use the
"public domain has been long exhausted, and in addition
"thereto such enlargement and increase of its lands and facili-
"ties are not required for its own railroad purposes, but that
"other railroad companies have leased from the Illinois Cen-
"tral the use of its tracks, grounds and structures,
"from which a large rental is derived, and without such facili-
"ties so used and enjoyed by other railroad companies, its oc-
"cupancy of the public ground could be very much curtailed
"instead of being enlarged."

It is alleged that these claims and pretenses of the Railroad Company "are a great and irreparable injury to the State of "Illinois as a proprietor and owner of the bed of the lake, "throwing doubts and clouds upon its title thereto, and pre-"venting an advantageous sale or other disposition thereof"; that "the entry upon and the use and occupancy of the public "domain, as above set forth is a purpresture and a public "nuisance," and the court is called upon "to adjust and de-"termine the title to the portion of the lake in question, and to "limit and determine the rights therein and thereto of the "Illinois Central Railroad Company."

The prayer is, "that the title of the State of Illinois to the "bed of Lake Michigan may be established and confirmed; "that the claims of the said Railroad Company thereto under "the various grants and ordinances above referred to may be

"declared to be unfounded and without force, and that the "clouds and doubts cast thereby upon the title of the State be "removed; that the boundaries between the land of the "United States and the City of Chicago and of the State may "be ascertained, and the shore line and navigable water de- "termined; that the said Illinois Central Railroad Company "may be enjoined and restrained from filling any of the bed "of the lake, from sinking cribs or constructing piers therein, "or in any manner encroaching upon the domain of the State, "as the same is in this information asserted to exist, and that "the rights of the said Railroad Company, under the various "laws of the State, may be ascertained and declared; that the "structures and erections, all filling, piling and crib work and "pier constructions made by the Illinois Central Railroad "Company upon or in the said domain of the State, may be "directed to be removed, and such domain restored to the "condition in which it was before such encroachments were "made, and that the State of Illinois may be declared to have "the sole and exclusive right to develop the harbor of Chi- "cago by the construction of docks, wharves, etc., and to dis- "pose of such rights at its pleasure for the interests of the pub- "lic, and that such other and further or different relief may be "granted as is agreeable to equity." (Rec., 121–143.)

Answer of Illinois Central Railroad Company. Respondent admits that upon the admission of the State of Illinois into the Union the title to the bed of Lake Michigan within its boundaries became vested in the State, with full power of alienation, subject to the rights of riparian owners and the power to regulate commerce vested in the Congress of the United States.

It admits that a breakwater has been constructed in front of the City of Chicago by the United States, but says that no docks or wharves have been made within the enclosed area except those provided by the Railroad Company, and that no detailed plan for the improvement of the harbor has been adopted by the Government, except in relation to the part thereof occupied and improved by the Company.

It admits that fractional section fifteen was one of the tracts of public land granted to the State by Congress in 1827 to aid in the construction of a canal, and that the canal commissioners subdivided the tract in 1836, and caused a plat thereof

to be made and recorded, but it says that the subdivision included the whole fractional section, and that the portion thereof lying east of the west line of Michigan avenue, except block 23, was designated on the plat as "Michigan avenue," and became thereby dedicated to public use.

It admits that a loan was made to the State pursuant to the provisions of the Acts of February 21, 1843, and March 1, 1845, and that to secure the loan a deed was made by the Governor to the canal trustees of "all the canal lands then remaining unsold"; but it denies that any part of fractional section fifteen passed by that conveyance. It alleges that the canal commissioners had long prior thereto sold and conveyed all the lots in the subdivision fronting on Michigan avenue to various persons, who purchased the same relying on the plat, and that no title to any part of the tract remained in the State at the time the conveyance was made to the canal trustees; that after that conveyance was made, and before the year 1871, the canal was completed and all the indebtedness of the State growing out of its construction fully paid, and that on or about the 19th of August 1871 the canal trustees released and reconveyed the canal to the State, and all the property, rights, privileges and franchises pertaining thereto. The respondent therefore claims and insists that whatever rights, if any, the canal trustees may have acquired in fractional section fifteen, were released by that conveyance, and that all grants made by the State of lands in that section were binding *on the State* from the time they were made, and became absolute and effectual at least upon the execution of the release, if not before.

It admits the passage of the Act of Congress of September 20, 1850, donating land to the State in aid of the construction of the railroad, and the Act of February 10, 1851, incorporating the Illinois Central Railroad Company; also the passage of the city ordinances of June 14, 1852, September 10, 1855, and September 15, 1856, and says that it has faithfully observed and performed all the conditions thereof; it also admits that it entered upon the lands described in said ordinances, and says they were and are necessary for the maintenance and operation of its railroad and that it is rightfully entitled to hold and use the same. It alleges that it has been in the actual possession of the strip of ground 300 feet wide in front of fractional sections ten and fifteen, or of so much thereof

as lies west of the exterior line of its breakwater, continuously since 1853, and of the triangular pieces of ground referred to in the ordinances of September 10, 1855, and September 15, 1856, since the year 1856, under a claim of title, in each case, exclusive of any other right, and the complainants' cause of action in respect of the said parcels of land, if any there may be, did not accrue within twenty years before the commencement of this suit. It submits to the court that all the matters in said information complained of in respect of the said parcels of land are matters which may be tried and determined at law and are not cognizable in a court of equity; and it asks to have the same benefit of these defenses as if it had pleaded the same, or demurred to so much of the information as relates thereto.

It admits that in the year 1852 a considerable portion of what is now solid ground between Randolph and Twelfth streets, lying west of the railroad and east of Michigan avenue, was covered by water, but whether the solid ground extended at any time prior thereto beyond the west line of the railroad the respondent is not informed. It says that in 1852 the waters of the lake were advancing upon the shore, and had at some points between Randolph and Twelfth streets reached the eastern line of Michigan avenue as then laid out; that since the year 1852, and especially in 1872, immediately after the great fire in Chicago, the space between the avenue and the railroad, or that part of it then under water, was used as a dumping ground for the deposit of the waste and debris of the city, and that by such means, and without expense to the city, the ground has been filled nearly to a level with Michigan avenue.

It admits the passage of the Act of April 16, 1869, and claims the benefit of it as a valid and subsisting law. It insists that the Act was duly and constitutionally passed and took effect as a law of the State and became obligatory as such on the day of its passage. It denies that no action was taken in respect of the grants made to the respondent in said Act. On the contrary, it states the fact to be that within a reasonable time after its passage, to wit, July 6, 1870, it formally accepted the same and caused notice of such acceptance to be filed and made a matter of record in the office of the Secretary of State for the State of Illinois. It also avers that, relying upon the provisions of said Act, it entered upon, reclaimed and reduced to profitable use considerable portions of the submerged land therein described, before the Act was repealed, and expended

about $500,000 in so doing. It is further stated that the land so reclaimed has been otherwise improved at great expense, and is now in use by the respondent for carrying on its business and is necessary for such use. It is insisted that by said Act the State granted to the respondent the absolute title to the submerged lands therein described; that it was a grant *in præsenti*, and that the Act and the acceptance thereof constituted a valid contract between the State and the respondent, which could not be revoked or impaired without the consent of both parties thereto. The power of the legislature to make the grant and the capacity of the Railroad Company to accept it are insisted on; and the claim made by the State that the Act was inoperative by reason of any "peculiarity in the terms "of the grant," or that the grant was subject to revocation for want of consideration, is denied.

It admits the passage of the repealing Act of April 15, 1873, but says the Act has never been assented to or acquiesced in by the respondent, and is unconstitutional and void, because it was passed in violation of the first clause of section 10, article 1, of the Constitution of the United States, which prohibits the State from passing any law impairing the obligation of contracts, and also because it is repugnant to the first section of the fourteenth amendment of the Constitution of the United States, which declares that no State shall deprive any person of life, liberty or property without due process of law.

It also submits that the said Act is inoperative and void for the additional reason, that it is repugnant to that clause of the Constitution of the State of Illinois then and still in force, which provides that "no contract, obligation, or liability whatever of "the Illinois Central Railroad Company to pay any money in- "to the State treasury, nor any lien of the State upon or right "to tax property of said Company, in accordance with the "provisions of the charter of said Company, approved Febru- "ary tenth, in the year of our Lord one thousand eight "hundred and fifty-one, shall ever be released, suspended, "modified, altered, remitted, or in any manner diminished or "impaired, by legislative or other authority."

The respondent denies that it has ever encroached upon the domain of the State; but says that, having become the owner of all the land on the shore between Randolph street and the river, it has filled up a portion of the bed of the lake directly in front of said land and is occupying the same for the pur-

poses of its business and in furtherance of the commerce of the city. It admits that these improvements were at one time suspended in consequence of an information filed in behalf of the United States for an injunction; but says that a conference took place between the respondent and the officers of the War Department, the result of which was that the plan of the proposed improvements was agreed to, and the work was afterwards completed in accordance with the agreement. It admits that it has begun the work of filling with earth a portion of what was at the time of the passage of said Act of 1869 the bed of the lake, north of the south line of lot 21; but says that it is the owner in fee of all the ground bordering the lake at the points where such work is in progress. The respondent alleges that none of the improvements made or in contemplation extend or are intended to be extended into the lake to the detriment of commerce, or that they do, or will when completed, interfere with or obstruct navigation; and it claims title to the lands reclaimed and the right to the possession and use thereof, under and by virtue of its charter, the Act of April 16, 1869, and its rights as riparian owner.

The respondent denies that it claims or has ever claimed the right to fill up the bed of the lake to an indefinite extent, or to any extent detrimental to the interests of commerce, as the same may be determined by the proper officers of the United States, but it claims the right to make improvements on the shore of the lake, within the limits of its riparian ownership, for the necessary accommodation of its railroad traffic and the promotion of commence and navigation, and also to the extent authorized by the said Act of 1869. It admits that in taking possession of, improving and making available for business purposes the shallow waters of the lake adjacent to the shore, it is and will be subject to all the conditions, requirements and obligations imposed by the said Act; and it submits that by reason of said Act and the acceptance thereof the State is estopped from asserting, as against the respondent, any right, title or interest in respect of the matters alleged in the said amended information. (Rec., 69 – 95, 166.)

Answer of the City of Chicago. By its answer to the original information all the facts therein stated are admitted. But the amended information contains additional averments, and in its answer to the latter the city insists that the plat of fractional section fifteen included all the land in the

fractional section; that the plat was certified, acknowledged and recorded in conformity to the laws of the State then in force relating to town plats, and that by virtue of such laws the plat became and was a conveyance of all that portion of the tract thereon designated as Michigan avenue to the municipality then known as the town of Chicago, to be held by it "in trust for the people of the State of Illinois for the public use indicated by the designation on the face of the plat". It denies that this land or any part of the fractional section was conveyed by the Governor to the canal trustees, and avers that the legislature by the Acts approved February 18, 1861 and February 13, 1863 (referred to in the preceding statement) expressly ratified and confirmed the dedication to public use of all the ground shown on the plat lying north of block 23 and east of the lots abutting on Michigan avenue. It is further averred that the city has been in possession of the ground since its incorporation in 1837, and "has expended thousands of dollars in protecting the same from the encroachment of Lake Michigan and in restoring the same from and after the abrasions made by the waters of said lake."

It is stated that on the 23d of April 1875 the city adopted the Act of the legislature entitled "An Act to provide for the incorporation of cities and villages," approved April 10, 1872, and that by said Act it has the following among other powers: "To erect and keep in repair public landing places, "wharves, docks and levees. To regulate and control the use "of public and private landing places, wharves, docks and lev-"ees. To fix the rate of wharfage and dockage. To collect "wharfage and dockage from all boats, rafts or other craft "landing at or using any public landing place, wharf, dock or "levee within the limits of the corporation." Defendant also says that "by said Act it is given jurisdiction upon all waters within or bordering upon said city to the extent of three miles beyond the limits of the city."

Defendant further states that on the 7th of June 1839 the United States caused so much of fractional section ten as lay south of the Chicago river to be subdivided and platted in accordance with the laws of the State; that a plat thereof known as "Fort Dearborn Addition to Chicago," was duly made, certified, acknowledged and recorded, and that the said plat by virtue of the laws of the State then in force became and was a conveyance to the city of all the streets, avenues, alleys

and public grounds delineated on the map, to be held in trust for the public use.

It claims to have been since the plats of fractional sections ten and fifteen were made and recorded entitled to all the rights of a riparian owner on the shore of the lake from Randolph street to Park Row; and says that by virtue of several Acts of the legislature particularly mentioned it is and has been charged with the duty of developing, protecting and controlling the harbor; that the harbor of the city has heretofore consisted largely of the Chicago river, which has a dock frontage many miles in extent, but that the increase of population and business has been such as to require greater harbor facilities, and the duty rests upon the city to provide the same, "and to that end to avail itself of the dock frontage from Randolph street to Park Row, its ownership whereof and the rights appurtenant whereto it has never parted with."

Reference is made to the Act of April 16, 1869, and it is alleged that the city has never accepted the same, and is not bound thereby. It is insisted that the Act is void for lack of power in the legislature to make the grants therein attempted to be made; that the Illinois Central Railroad Company had no power to enter upon the erection of docks and wharves and the construction of a harbor in the waters of the lake, and could derive no such power under or by virtue of said Act; that the Act never became operative, and the subsequent Act of April 15, 1873 was a valid revocation thereof. (Rec., 97–100, 104–108.)

Cross-Bill of the City of Chicago. The cross-bill repeats the averments made by the city in its answer, and further alleges that although a right of way was allowed to the Illinois Central Railroad Company by the ordinance of June 14, 1852, upon the conditions therein expressed, yet that ordinance contains nothing to divest or limit the city's rights in the premises; that said company sets up and asserts that it is empowered by the act of April 16, 1869, to interfere with the rights and ownership of the city, and threatens to fill with earth a portion of the bed of the lake in front of fractional sections ten and fifteen, and to take possession of and use the same for wharfage, dockage and landing purposes; that the intrusion thus threatened would inflict a peculiar damage upon the city; that the claims and threats of the said company throw doubts and clouds upon the city's title, prevent it from making

an advantageous use of its riparian rights and developing its harbor, thereby inflicting injuries which can be relieved only in a court of equity.

The relief prayed for is, that the city's title to the portion of fractional sections ten and fifteen thereinbefore described be adjudicated by the court; that the city may be declared to be the owner in fee thereof, and of the riparian rights thereunto appertaining, and to have the sole and exclusive right to develop the harbor by the construction of docks, wharves and levees, and "the disposition of said rights by lease or otherwise, as authorized by law;" that the Railroad Company be enjoined from interfering with the city's rights and ownership, as aforesaid, and that such further and other relief may be granted as shall be agreeable to equity. (Rec., 108–117.)

The State's Answer to the Cross-bill. The State denies that any part of fractional section fifteen, lying east of the east line of Michigan avenue was included in the subdivision made by the canal commissioners in 1836, except block 23; it also denies that the plat became under the laws of the State, then in force, a conveyance of that part of the fractional section to the city of Chicago, or that the city is or ever has been the owner thereof as claimed in the cross-bill. It insists that the canal commissioners had no authority to dedicate the said land to public use, and denies that the legislature did or could ratify any such pretended dedication.

It admits that the plat of "Fort Dearborn Addition" was made, certified and recorded in conformity to the laws of the State, and that the fee of all streets, avenues, alleys and public grounds shown thereon passed to the city by virtue of the plat.

It denies that the city is or ever has been entitled to the rights of a riparian owner on the shore of the lake in front of fractional section fifteen, but says, on the contrary, that the State is and always has been the owner of all that part of the fractional section adjacent to the lake, north of block 23, and is entitled to all the riparian rights and privileges appurtenant thereto.

It denies any right or ownership in the city which authorizes or permits it to avail itself of the dock frontage between Madison street and Park Row; and insists that the use of the

so-called public ground on the lake front in fractional section fifteen has always been subject to the paramount right of the State at any time to put a stop to the same. (Rec., 144–151.)

The Railroad Company's Answer to the Cross-bill. The respondent admits that the plat of fractional section fifteen included the whole fractional section, and that all that portion of the tract designated on the plat as Michigan avenue became thereby dedicated to public use; but it denies that any beneficial interest in the land became vested in the City of Chicago, or that the city ever had or held any interest therein, except as a mere naked trustee for public uses; such uses being at all times subject to the control and disposition of the State legislature.

It admits that the legislature by the Acts of February 18, 1861 and February 13, 1863 ratified and confirmed the setting apart of the said land for public uses, but it denies that the city acquired by either of said Acts any other or greater interest in the land than it had previously held.

It admits the making and recording of the plat of Fort Dearborn Addition to Chicago in 1839, but whether the plat operated as a conveyance to the city of the streets and public grounds thereon designated, or is evidence only of a dedication at common law, the respondent leaves to the judgment of the court upon such proofs as may be presented.

It denies that the city is or has been entitled to the rights of a riparian owner on the shore of the lake in front of fractional sections ten and fifteen, or that by virtue of any law of the State referred to in the cross-bill it has been charged with the duty of developing, protecting or controlling the harbor, or endowed with the requisite powers for so doing, or that it is now or ever has been able, under the constitution and laws of Illinois, to acquire funds for such purpose.

It alleges that whatever interest or title the city may have acquired to the open ground in fractional sections ten and fifteen, it acquired, and, so far as the land is undisposed of, still holds the same as a naked trustee for the use and benefit of the public, and as a municipal corporation organized for the purposes of local government in aid of and as an agency for the State of Illinois; that such title and interest has been at all times subject to the control and disposition of the legislature,

and that the city cannot set up any claim, either as trustee or otherwise, as against the Acts and grants of the State.

It further alleges that by the location of the railroad in front of fractional section fifteen and that part of fractional section ten south of Randolph street, a strip of land two hundred feet in width was interposed between the public ground and the lake, to which the respondent acquired title by virtue of the grant from the State in its charter, and that it thereby became and ever since has been and still is entitled to all the rights and privileges of a riparian owner in respect to the submerged land lying east of and adjacent thereto.

The respondent insists that the Act of April 16, 1869, took effect as a law and contract of the State, according to the terms and conditions thereof, upon its passage by the legislature; that it was competent for the legislature to make the grants therein contained; that the respondent had full power and authority to accept them, and if there was any incapacity in this respect under its original charter, the infirmity was cured by the said Act itself; that the consent of the city was not necessary to the acquisition by the respondent of the rights and interests thereby granted; that the grants so made were formally accepted by the respondent before the passage of the repealing Act of April 15, 1873, and that the last-mentioned Act is inoperative and void for the same reasons which are set forth in its answer to the amended information. (Rec., 151–163.)

THE DECREE.

It is Found and Adjudged: That—saving the rights hereinafter defined of the Illinois Central Railroad Company—(1) the fee of all the streets, avenues, alleys and public grounds shown upon the plat of Fort Dearborn Addition to Chicago, including the open space on the shore of the lake south of the north line of Randolph street extended to the lake and north of the line between fractional sections ten and fifteen, upon which, as the same appears upon the plat, are the words: "Public ground, forever to remain vacant of buildings"; and (2) the fee of that part of fractional section fifteen which is bounded on the north by the line between fractional sections ten and fifteen, on the west by the west line of Michigan avenue, on the east by Lake Michigan, and on

the south by the north line of block 23, as the same appears on the plat of the canal commissioners' subdivision acknowledged June 13, 1836; and (3) the fee of all the made or reclaimed ground as it now exists and as it appears on the Morehouse map, east of Michigan avenue and between the north line of Randolph street extended to the lake and the north line of block 23 extended to the lake, including the grounds upon which rest the tracks and breakwater constructed by the Railroad Company between said last mentioned lines on the lake front, and including the small triangular piece of ground east of the tracks and breakwater of the Company between the north lines of Washington and Monroe streets extended to the lake, and marked on the Morehouse map "Built 1873,"—are all in the city of Chicago in trust for public use.

That the city of Chicago, as riparian owner of said grounds on the east or lake front of said city, between the north line of Randolph street and the north line of said block 23, each produced to Lake Michigan, and in virtue of authority to that end conferred by its charter, has, among other powers, the power to construct and keep in repair on said lake front, east of said premises within the lines last given, and in such manner as may be consistent with law, public landing places, wharves, docks and levees, subject, however, in the execution of that power, to the authority of the State by legislation to prescribe the lines beyond which piers, docks, wharves and other structures, other than those erected by the General Government, may not be extended into the waters of the harbor that are navigable in fact, and to such supervision and control as the United States may rightfully exercise in and over said harbor, and subject also to the enjoyment by the Illinois Central Railroad Company of the rights now to be defined and decided.

That the Illinois Central Railroad Company is the owner in fee of all the wharves, piers and other structures erected by it in the city of Chicago, east of Michigan avenue, south of Chicago river, and north of the north line of Randolph street extended eastwardly, as shown upon the Morehouse map (made part of the decree), including the station grounds lying west of the slip C, the pier marked C lying east of slip C and represented upon the Morehouse map to have been built in 1867, and piers 1, 2 and 3, lying east of pier C last mentioned and represented upon said map to have been built as

follows: pier 1 in 1872 and 1873, pier 2 in 1881, and pier 3 in 1880, and is also entitled to the use, for purposes of its business, of the slips marked on said Morehouse map.

That said Company is likewise the owner in fee of all the wharves, piers and other works constructed by it east of its main tracks between the north line of block 23 in fractional section fifteen and the center line of Sixteenth street extended, including the pier or line of piling represented on the Morehouse map to have been built in 1870, and the station grounds lying west of the said pier and contiguous thereto; also of the wharf projecting into the lake from the grounds last mentioned and represented upon the Morehouse map to have been built in 1885; which said wharves and other works so constructed and so far as constructed are lawful structures and not encroachments upon the domain of the State of Illinois, or upon the public right of navigation, or upon the property, interests or estate of the city of Chicago.

That the present occupancy and use by the Illinois Central Railroad Company, for purposes of right of way and not otherwise, of two hundred feet in width of ground north of the southern boundary of the open space known as Lake Park (the west line of said ground being 400 feet from and parallel with the west line of Michigan avenue), and its occupancy and use for like purposes of the two triangular pieces of ground immediately south of Randolph street and east of the Company's present tracks, one of them being east of the breakwater and marked "Built 1873", are in accordance with law and the provisions of certain ordinances of the city of Chicago passed July 14, 1852, September 10, 1855, and September 15, 1856.

That said Company is entitled to the use in perpetuity of the said two hundred feet in width and said two triangular pieces of ground last described for purposes of a right of way and not otherwise, subject to such regulations in respect to said use as the city of Chicago or the State of Illinois may legally establish, and subject to the terms and conditions of said ordinances of 1852, 1855 and 1856, except that if the city could consistently with the charter of said Company grant to it, as by said ordinance of 1852 it assumed to do, the right to use for its line of road and other works necessary to protect the same from the lake a width of 300 feet from the southern boundary of Lake Park near Twelfth street to the north line of

Randolph street, the said Company has elected to appropriate for such purposes a width of only 200 feet, and cannot now, without further license from proper public authority, appropriate a greater width.

That the bridge or viaduct constructed by the Illinois Central Railroad Company over its tracks and grounds at the foot of Randolph street, with the approaches thereto, is a lawful structure, having been erected in conformity to the provisions of the ordinance legally passed by the city council of Chicago July 12, 1880.

That the third section of the Act of the General Assembly of the State of Illinois passed April 16, 1869, entitled "An Act in relation to a portion of the submerged lands and Lake Park grounds, lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the City of Chicago," so far, at least, as it confirms "the right of the Illinois Central Railroad Company, under the grant from the State in its charter, . . . and under and by virtue of its appropriation, occupancy, use and control, and the riparian ownership incident to such grant, appropriation, occupancy, use and control, in and to the lands submerged or otherwise, lying east of the said line running parallel with and 400 feet east of the west line of Michigan avenue, in fractional sections ten and fifteen," is a valid and constitutional exercise of legislative power, and legalizes as well what was done by said company prior to April 16, 1869, in the way of filling in the lake and constructing wharves, piers, tracks, warehouses and other works between the Chicago river and the north line of Randolph street extended eastwardly, as its occupancy and use for way ground of the said triangular pieces of ground immediately south of Randolph street; and that the subsequent Act of the General Assembly of Illinois passed April 15, 1873, in so far as it sought, by repealing the said Act of April 16, 1869, to revoke or annul said confirmatory clause of the last named Act, was void under the constitution both of Illinois and the United States. But the court is of opinion, and so adjudges and decrees, that the said Act of April 15, 1873, repealing said Act of April 16, 1869, had the effect in law to withdraw from said Railway Company the grant to it, its successors and assigns, by the third section of said Act of April 16, 1869, of "all the right and title of the State of Illinois in and to the submerged lands constituting the bed of Lake Michigan

and lying east of the tracks and breakwater of the Illinois Central Railroad Company for the distance of one mile, and between the south line of the south pier extended eastwardly and a line extended eastward from the south line of lot twenty-one, south of and near to the round-house and machine shops of said Company, in the south division of the city of Chicago," and to reinvest the State with such right and title as it had in and to the said premises prior to the passage of said Act of April 16, 1869; and said repealing Act had the further effect to withdraw from said Company the additional powers conferred upon it by said Act of April 16, 1869 to improve the harbor of Chicago and engage in the business of constructing and maintaining wharves, piers and docks for the benefit of commerce and navigation generally, and not in the prosecution of its business as defined and limited by its original charter and the laws of the State, saving, however, to said Company, as unaffected by said repeal, the right to hold and use as part of its way-ground or right of way, and not otherwise, the before mentioned part of the submerged lands east of its breakwater, between Monroe and Washington streets extended eastwardly, which was reclaimed from the lake in 1873, presumably upon the faith of the Act of 1869, and is marked on the Morehouse map with the words "Built 1873."

It is further ordered, adjudged and decreed, that the Illinois Central Railroad Company be perpetually enjoined from erecting structures in or filling with earth or other materials any portion of the bed of Lake Michigan as it now exists, and as shown on said Morehouse map, east or in front of said fractional sections ten and fifteen—that is, east or in front of the grounds now occupied and used by it, between the Chicago river and the center line of Sixteenth street, extended eastwardly, except that said Company may complete the slip or basin already commenced immediately north of Sixteenth street extended, with a wharf on each side of it not exceeding 100 feet in width in each, where vessels coming into such slip or basin may load and unload, and upon which tracks of the Company may be laid. (Rec., 220-225.)

Assignment of Errors

The Illinois Central Railroad Company assigns for error:

1. That part of the said decree by which it is found and adjudged, that (saving the rights thereinafter defined of the Illinois Central Railroad Company) the fee of all the made or reclaimed ground, as it now exists and as it appears on the Morehouse map (made a part of the decree), east of Michigan avenue and between the north line of Randolph street extended to Lake Michigan and the north line of block twenty-three extended to the lake, including the grounds upon which rest the tracks and breakwater constructed by said Company on the lake front between said last named lines, and including the small triangular piece of ground east of the present tracks and breakwater of said Company between the north lines of Washington and Monroe streets extended to the lake, and marked on the Morehouse map with the words "Built 1873," are all in the city of Chicago in trust for public use; and that the said city of Chicago, as riparian owner of said grounds on the east or lake front of said city between the north line of Randolph street and the north line of said block twenty-three, each of said lines being produced to the lake, and in virtue of authority to that end conferred by its charter, has among other powers the power to construct, erect and keep in repair on said lake front east of said premises within the lines last given, and in such manner as may be consistent with law, public landing places, wharves, docks and levees.

2. That part of the said decree by which it is found and adjudged that, if the city of Chicago could consistently with the charter of the Illinois Central Railroad Company, "grant to it—as by said ordinance of 1852 it assumed to do—the right to use for its line of road and other works necessary to protect the same from the lake, a width of 300 feet from the southern boundary of Lake Park near Twelfth street to the north line of Randolph street, the said Company has elected to appropriate for such purposes a width of only 200 feet, and cannot now without further license from proper public authority appropriate a greater width."

3. That part of the said decree by which it is found and adjudged, that the Act of the General Assembly of the State of Illinois passed April 15, 1873, repealing the prior Act of the

General Assembly of said State passed April 16, 1869, entitled "An Act in relation to a portion of the submerged lands and Lake Park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the City of Chicago," had the effect in law to withdraw from said Railroad Company the grant to it, its successors and assigns, by the third section of said Act of April 16, 1869, of "all the right and title of the State of Illinois in and to the submerged lands constituting the bed of Lake Michigan, and lying east of the tracks and breakwater of the Illinois Central Railroad Company for a distance of one mile, and between the south line of the south pier extended eastwardly and a line extended eastward from the south line of lot 21, south of and near to the round-house and machine shops of said Company, in the south division of said City of Chicago," and to reinvest the State with such right and title as it had in and to said premises prior to the passage of said Act of April 16, 1869; and that said repealing act had the further effect to withdraw from said Company the additional power conferred upon it by said Act of April 16, 1869, to improve the harbor of Chicago and to engage in the business of constructing and maintaining wharves, piers and docks for the benefit of commerce and navigation generally, and not in the prosecution of its business as defined and limited by its original charter and the laws of the State.

4. That part of the said decree by which it is adjudged and decreed, that the Illinois Central Railroad Company be perpetually enjoined from erecting structures in or filling with earth or other materials any portion of the bed of Lake Michigan, as it now exists and as shown on said Morehouse map, east or in front of said fractional sections ten and fifteen—that is, east or in front of the grounds now occupied and used by it between the Chicago river and the center line of Sixteenth street extended eastwardly—except that said Company may complete the slip or basin already commenced immediately north of Sixteenth street extended, with a wharf on each side of it not exceeding 100 feet in width in each, where vessels coming into such slip or basin may load and unload, and upon which tracks of the Company may be laid.

All of which, saving the exception aforesaid relating to the completion of the slip or basin immediately north of Sixteenth street extended, with a wharf on each side of it, is, as appellant is advised and respectfully submits, erroneous. (Rec., 652–654.)

The Attorney General of the State assigns for error:

That the court erred in sustaining the validity of the Act of April 16, 1869, and in confirming the title of the Illinois Central Railroad Company to the portion of the submerged lands reclaimed by said Company prior to the repeal of said Act. (Rec., 657.)

BRIEF.

1. The railroad company is charged in the information with an invasion of the proprietary interest of the State in the bed of the lake. The encroachments complained of are upon the *jus privatum* or right of property asserted by the State, and not upon the *jus publicum* or governmental control over navigable waters vested in the State for public purposes.

There is a broad distinction between a violation of the public right in navigable waters and an invasion of the proprietary interest of the sovereign. The one creates a public nuisance; the other a purpresture.

Gould on Waters, Sec. 21.
Kerr on Injunctions, 395.

To constitute a public nuisance, there must be damage to the public right of navigation. No charge of that nature is preferred in the information, nor is any proof which would sustain such a charge to be found in the record. The *acts* complained of are simply trespasses on lands, once under water, claimed to be the property of the State.

It is alleged in the information, that the claims made by the railroad company "are a great and irreparable injury to the "State of Illinois as a proprietor and owner of the bed of the "lake, throwing doubts and clouds upon its title thereto and "preventing an advantageous sale or other disposition thereof"; and in the prayer for relief the State asks, that its title "may "be established and confirmed, that the claims made by the "said railroad company · · · may be declared to be "unfounded and without force, and that the clouds and doubts "cast thereby upon the title of the State be removed · · "and that the State of Illinois may be declared to have the

"sole and exclusive right to develop the harbor of Chicago by "the construction of docks, wharves etc., and to dispose of such "rights at its pleasure."

To make out a case the State must establish a legal title and right of possession to the premises in controversy.

II. The complainants allege and the respondent admits, that upon the admission of Illinois into the Union in 1818 the title to the bed of Lake Michigan, or so much of it as lies within the boundaries of the State, became vested in the State.

Upon the separation of the British Colonies in America from the mother country, they succeeded as sovereign States to the title of the crown in the tide waters within their territorial limits. Both the *jus publicum* and the *jus privatum*, which before then had been vested in the crown and parliament, or in the local governments established under the royal sanction, became vested in the several States. They acquired not only the ownership of the soil under navigable waters, but also the legislative authority to regulate and control the rights of the public. All the prerogatives and powers which before belonged either to the crown or parliament, became immediately vested in the State.

Martin v. *Waddell*, 16 Peters, 367.
Smith v. *Maryland*, 18 How., 71.
Commonwealth v. *Alger*, 7 Cush., 53.
Nichols v. *Boston*, 98 Mass., 39.
People v. *New York Ferry Co.*, 68 N. Y., 71.
Langdon v. *Mayor of New York*, 93 N. Y., 129.
Stevens v. *Patterson and Newark R. R. Co.*, 34 N. J. Law, 532.
Gould on Waters, Sec. 32.

The States since admitted into the Union have the same proprietary rights, sovereignty and jurisdiction in and over navigable waters within their respective limits and the soil under them, as the original thirteen States.

Pollards' Lessee v. *Hagan*, 3 How., 212.
Goodtitle v. *Kibbe*, 9 How., 471.
Den v. *Jersey Company*, 15 How., 426.
Weber v. *Harbor Commissioners*, 18 Wall., 57.
Knight v. *U. S. Land Association*, 142 U. S., 161.

The foregoing cases relate to lands under tide waters; but the principles enunciated are equally applicable to navigable waters above the flow of the tide.

County of St. Clair v. *Lovingston*, 23 Wall., 46.
Barney v. *Keokuk*, 94 U. S., 324.
Packer v. *Bird*, 137 U. S., 661.
Hardin v. *Jordan*, 140 U. S., 371.

Like all other property belonging to the State, land so situated may be dealt with and disposed of according to the pleasure of the legislature, subject only to the rights incident to private ownership of land on the shore, and to the exercise of the authority possessed by congress over navigable waters by virtue of its power to regulate commerce with foreign nations, and among the several States.

By the Constitution of Illinois in force from 1848 to 1870, the general assembly was invested with full legislative authority. (Article 3, Section 1.) It is an established principle of public law in the United States that the legislature of a State may enact any law on any subject, unless restricted by some limitation in the State or Federal constitution. It has, in general, supreme control over the property and revenues of the

State, and may dispose of the property of the State in navigable waters in any way which will, in its opinion, promote the interests of the public.

Langdon v. *Mayor of New York*, 93 N. Y., 129, 156.
Kerr v. *West Shore Railroad Co.*, 127 N. Y., 269.
Lyman v. *Gedney*, 114 Ill., 388.
Harris v. *Board of Supervisors*, 105 Ill., 445.
Cairo and St. Louis R. R. Co. v. *Warrington*, 92 Ill., 157.
Mason v. *Wait*, 4 Scam., 127.
Nichols v. *Boston*, 98 Mass., 39.
Hoboken v. *Penn. Railroad Co.*, 124 U. S., 657.
Pound v. *Turck*, 95 U. S., 459.
City of New York v. *Miln*, 11 Peters, 103.
Cooley's Const. Limitations, 87–89.

III. The Illinois Central Railroad Company was authorized and required by its charter to lay out and construct a railroad *into* the city of Chicago. (*Ante*, p. 5.) To aid in building the road, extensive grants of land were made by the State to the Company—among them, the following:

"SEC. 3. The said corporation shall have right of way "upon, *and may appropriate to its sole use and control* for the "purposes contemplated herein, land not exceeding 200 feet "in width, through its entire length; may enter upon and take "possession of and use all and singular any lands, streams and "materials of every kind, for the location of depots and stop-"ping stages, for the purpose of constructing bridges, dams, "embankments, . . . station grounds, . . . turn-"outs, engine-houses, shops and other buildings necessary for "the construction, completing, altering, maintaining, preserv-

"ing and complete operation of said road. *All such lands*, "*waters, materials and privileges belonging to the State, are* "*hereby granted to said corporation for said purposes.*" (*Ante*, p. 4.)

The effect of these words is obviously to invest the company with a complete title to all the lands belonging to the State, which should be required and taken for the purposes mentioned.

Potomac Steamboat Co. v. *Upper Pot. S. Co.*, 109 U. S., 672, 680.

Van Ness v. *City of Washington*, 4 Pet., 232, 284.

The grant is not confined to a way two hundred feet in width; but the charter authorizes in express terms the appropriation of as much more land as should be needed for station grounds, turnouts, etc., necessary for the "construction, com- "pleting, altering, maintaining, preserving and complete oper- "ation of said road."

The right of the company to appropriate to its use the lands of the State, is co-extensive with the power conferred by the same section of the charter to acquire by purchase or condemnation the lands of private owners. The latter is a continuing power which may be exercised from time to time as the necessities of the company may require.

Chi. and West Ind. R. R. Co. v. *Ill. Cen. R. R. Co.* 113, Ill., 156.

Railroad Co. v. *Wilson*, 17 Ill., 123.

N. Y. & H. R. R. Co., v. *Kip*, 46 N. Y., 546.

Lewis on Eminent Domain, Sec. 259.

The charter is still a law of the State. No attempt has been made to repeal it, or to restrain by subsequent legislation the exercise of the right to enter upon and use the lands

of the State. There is no limitation as to the time when, or the number of times, the right may be exercised. The only limit in this respect is the reasonable necessity of the corporation in the discharge of its duty to the public

IV. The consent of the common council of Chicago to the location of the railroad within the city, was required by the eighth section of the company's charter. An ordinance granting that consent was passed June 14, 1852, and a formal contract under seal was entered into between the railroad company and the city, in which it was covenanted that the ordinance should be of perpetual obligation, and that each party would abide by and perform all the obligations therein contained according to the true intent and meaning thereof. (Record, 623–31.)

The assent was given on conditions which were extremely burdensome, but they have been fully complied with. The railroad was located and built in the open waters of the lake in front of fractional sections ten and fifteen, as directed by the common council; and the company had been in peaceable possession of the grounds appropriated for that purpose, with the exception of a strip one hundred feet in width on the east side of the railroad tracks, for thirty years before the commencement of this suit.

By the terms of the ordinance the company was permitted (Sec. 2), "to enter upon and use in perpetuity, for its line of road *and other works necessary to protect the same from the lake*, a width of three hundred feet from the southern boundary of the public ground near Twelfth street to the northern line of Randolph street." And it was authorized (Sec. 9), to use the ground, not only for the passage of trains, but also "for making up and distributing trains." It was also pro-

vided (Sec. 3), that the company might extend its works and fill out into the lake, between Randolph street and the river, "to a point in the southern pier [at the mouth of the river] 400 feet west of the east end of the same." Here (Sec. 1) the depot was to be located and such *buildings* and *slips* as might be necessary and convenient for the company's business.

It is tacitly conceded, that the land thus authorized to be appropriated was "necessary for the construction, maintaining, preserving and complete operation of the railroad." It is true that the city had no proprietary interest in the bed of the lake, and could convey none to the company; but it had police jurisdiction over the waters within a mile of the shore, and authority to determine where the road should be located. The rights of no private land owner were infringed, because the railroad company acquired by purchase all the property on the shore belonging to private owners, before the works were constructed. There was no unlawful intrusion on the domain of the State, because by the terms of the company's charter it had the right to enter upon and appropriate any lands of the State which were necessary for the purposes above mentioned.

That the charter conferred the right to take land of the State covered by the waters of the lake, was judicially determined by the Supreme Court of Illinois, at the very outset of the company's operations.

Soon after the passage of the ordinance of June 14, 1852, condemnation proceedings were commenced by the company against certain proprietors of land on the shore of the lake north of Randolph street. It was set forth in the petition, that "the railroad had been located and was to be constructed in the

waters of the lake, along the margin of the same, in front of the premises of the said parties, and partly over the same; that the depots, etc., of said railway were to be located in the waters of said lake, and in front of the said property." The county court, in which the petition was filed, refused to entertain the application on the ground, among others, that the company had no power to locate its road in the waters of Lake Michigan. It was also objected, that the property sought to be condemned was not required for the use of the petitioner, but was to be used conjointly by it and the Michigan Central Railroad Company, a foreign corporation having no power to acquire such rights in the State of Illinois. The further objection was urged, that the premises were not required for any use authorized by the charter of the company, but for the purpose of building slips, docks, wharves, basins piers and other structures appertaining to the business of commerce and navigation. An application was then made to the Supreme Court for a mandamus to compel the judge of the county court to take cognizance of the petition. It was decided that the company had the right by its charter to locate the road over the premises in question, the city of Chicago having assented. The objections made were overruled and a peremptory mandamus awarded.

Illinois Central Railroad Co. v. *Rucker*, 14 Ill., 353.

The decision was made at the June Term, 1853, and soon afterwards the company acquired by *purchase* not only the property in question in that proceeding, but all the water lots on the east side of Michigan avenue between Randolph street and the river.

Another important point must not escape observation.

Reference was made in the opening statement to the Act of February 18, 1861, amendatory of the city charter (*ante*, p.

15). In the 64th section of that Act the city ordinance of June 14, 1852, is plainly referred to; and it is there enacted that every owner of a lot fronting on Michigan avenue shall have the right to enjoin the railroad company *and all other persons and corporations from any violation of the provisions of said ordinance*, and, by bill or petition in chancery, *to enforce the provisions of said ordinance.* On the revision of the city charter in 1863 the same law substantially (*ante*, p. 16) was re-enacted. By these enactments the ordinance is not only recognized as valid, but all persons and corporations are prohibited from violating its provisions. There could not be a more effectual ratification. If any doubt could exist before as to the validity of the ordinance, it was completely removed by this legislative action.

The ordinance is still in force, and the contract based upon the ordinance is of perpetual obligation. Not only is the company's title secure to the submerged lands it has actually occupied, but the right of the company to the possession and use of the whole of the strip three hundred feet wide it was authorized to occupy, as against either the city or the *State*, admits of no reasonable question. That the use of the whole is needed to enable the company to manage conveniently and expeditiously its largely increased traffic is not disputed; and the report made by the board of engineers to the Secretary of War in 1882 (*ante* pp. 32, 33), is proof, that it is also needed to develop to the greatest extent the advantages which the proximity of the railroad to the harbor can be made to afford to the general commerce of the country.

It is adjudged in the decree, that if the city could consistently with the charter of the company grant the right, as by the ordinance of 1852 it assumed to do, to use a width of 300 feet from the southern boundary of Lake Park to Randolph

street, the company had elected to appropriate a width of only 200 feet, and cannot now, without further license from proper public authority, appropriate a greater width. (Record, 223.)

Nothing is said upon this point in the opinion of the court; but it is apparent from the decree that doubts were felt whether the permission given by the ordinance to occupy a width of more than 200 feet was consistent with the company's charter. It is believed that on further consideration all doubts on that question will be removed. As before explained, the grants made in the charter were not confined to a way 200 feet in width; as much additional land could be taken as should be required for station grounds, turnouts, etc., necessary for the complete operation of the road. Nor was the use of the three hundred feet in width limited by the ordinance to that of a mere roadway for the passage of trains; works necessary to protect the railroad from the lake were authorized, and the ground could also be used as a yard "for making up and dis-"tributing trains." The ratification of the ordinance by the legislature must also have escaped observation. By this action the ordinance became the act of the State as well as of the city, and no question as to its validity can now be raised by either.

The proof shows that the ordinance was accepted by the railroad company. The company did not immediately occupy all the land described; but the title to land is not lost hy leaving it in its natural state without improvement.

Potomac Steamboat Co. v. *Upper Pot. S. Co.*, 109, U. S. 672, 684.

Boston v. *Lecraw*, 17 How. 426, 436.

Barclay v. *Howell's Lessee*, 6. Pet. 498, 504–5.

The company took possession of so much of the land as was then needed. When more became necessary for the

proper conduct of its business, it attempted to take possession of the rest, and was prevented, not by the interference of the city—for the city did not object (Rec., 402)—but by the action of the War Department which has control of the harbor. (*Ante* pp. 31–34.)

That there was any election by the company to relinquish the right to the additional one hundred feet, or that the company is in any way estopped from claiming its rights against the city and State, is a conclusion, we respectfully submit, not warranted by any evidence in the record.

V. It was conceded in the original information, that the railroad company was rightfully in possession of the strip of land two hundred feet in width between Park Row and Randolph street (Record, 11, 15); and in the last amended information it is alleged (Record, 140) that the *first indication* of any intention to encroach upon the domain of the State, was the procuring of the passage of the ordinances of September 10, 1855 and September 15, 1856, which authorized the taking for railroad uses of the two triangular pieces of ground near Randolph street.

Both of these parcels were covered at the time by the waters of the lake, and have been since filled in by the railroad company. The necessity for the occupation of the ground sufficiently appears from the recitals in the two ordinances (Record, 631–34), and is further explained by the testimony of Mr. Jeffery (Record, 368–9). The strip three hundred feet wide described in the ordinance of 1852, was too narrow at the upper end to admit of convenient access to the passenger-house and freight-yard.

Important conditions were attached to the consent granted by the ordinance of 1855 The company was required to lay out upon its own land a street fifty feet wide west of and

alongside its passenger-house, extending from Randolph street to Water street, and fill the same up its entire length within two years; also to fill up all the space between the railroad tracks and the shore west of the ground described in the ordinance. These conditions were complied with, and the city and public have since had the benefit of these improvements.

The city does not, and obviously cannot, complain of the occupation of these grounds as an encroachment. The State, it is equally clear, has no cause of complaint, because its consent to the appropriation of any land belonging to it, necessary for the complete operation of the railroad, was given in express terms in the company's charter. It was so decided in the court below.

VI. The land which has been recovered from the lake lying west of slip C, between Randolph street and the river, including the slips A and B, was filled in with the consent of the city, granted by the ordinance of 1852, which was afterwards ratified by the legislature. The improvements were made in front of land the company had purchased on the shore. At the side of slips A and B large elevators have been erected, which furnish necessary facilites for the storage of grain brought to Chicago over the railroad, and for the transfer of grain to vessels engaged in lake commerce. (Record, 358, 364–5, 387, 483–6).

In order to provide suitable means for the shipment and delivery of other commodities, slip C and pier C were constructed in 1867; and afterwards piers 1, 2 and 3 were built east of pier C with the approval of the War Department, which had at the time exclusive control of the outer harbor. (*Ante* pp. 27, 29). This license is to be accepted as conclusive evidence that the works do not obstruct the public right of navigation, but are advantageous to the uses for which the har-

bor is designed, and is in itself sufficient to justify their erection.

Pennsylvania v. *Wheeling Bridge Co.*, 18 How., 421.
South Carolina v. *Georgia*, 93 U. S., 4.
Wisconsin v. *Duluth*, 96 U. S., 379.
Boom Co. v. *Patterson*, 98 U. S., 409.
Stockton v. *Baltimore and N. Y. R. Co.* 32 Fed. Rep., 9.
Mississippi Bridge Co. v. *Lonergan*, 91 Ill., 508.

It is not alleged in the information, nor is there any evidence in the record tending to show, that these improvements are injurious to navigation. Wharves and piers in navigable waters are not obstructions, but essential aids to navigation; and where no positive law is violated by their construction, a littoral proprietor on the lake, although the ordinary water line is the boundary of his land (*Seaman* v. *Smith*, 24 Ill., 521), has the right to extend them far enough into the water to enable vessels to lie alongside and receive and discharge cargoes. They are not regarded in law as intrusions upon the public right, but as useful structures calculated to further the public use of the water, and impliedly licensed by the State.

Dutton v. *Strong*, 1 Black, 23.
Railroad Company v. *Schurmeir*, 7 Wall., 272.
Yates v. *Milwaukee*, 10 Wall., 497.
Atlee v. *Packet Company*, 21 Wall., 389.
Barney v. *Keokuk*, 94 U. S., 324.
Cohn v. *Wausau Boom Co*,, 47 Wis., 314.
Clements v. *Burns*, 43 N. H., 617–21.

The judgment of the court below was in consonance with these views; and in this particular the decree is open to no sound objection on the part of the State.

VII. The construction of the new piers north of Randolph street led to the passage of the ordinance of July 12, 1880, providing for the extension of Randolph street and the erection of a viaduct across the railroad tracks to the base of pier 3. (Record, 646–7.)

To accomplish the purpose for which the piers were built, it was necessary that they should be made accessible not only to vessels navigating the lake and to the cars of the railroad company, but also to wagons and teams from the streets of the city. The only safe and convenient access that could be provided for the latter was by a viaduct spanning the railroad tracks. The ordinance was clearly within the powers vested in the city council. By the general law under which the city is incorporated, the council is authorized in express terms "to lay out" and "extend" streets, and "to construct and keep in repair bridges, viaducts, tunnels, and regulate the use thereof." The cost of constructing, maintaining and repairing the viaduct was thrown upon the railroad company, while the right to use it was made "forever free to the public and to all persons having occasion to pass and repass thereon."

The viaduct was built in 1881, in strict accordance with the terms of the ordinance. It has been maintained since by the railroad company, and the use of it has been free to the public. (Record, 371–2.) No part of the structure, except the western approach, is on land which was above water in 1839.

It was rightly held in the court below, that the viaduct is "a "lawful structure erected in conformity to the provisions of "the ordinance legally passed by the city council of Chicago "July 12, 1880."

VIII. The railroad company's title to all the land it had reclaimed from the lake lying east of the west line of the railway in fractional sections ten and fifteen, was confirmed by the Act of April 16, 1869. (*Ante*, p. 21.)

It is important to notice carefully the words of the confirmatory clause in section three of that statute. The right of the company *under the grant from the State in its charter* and the *riparian ownership* incident to *such grant*, in and to the lands which had been appropriated, is explicitly recognized. It was *this* right which the legislature confirmed. If any doubt could have existed before, whether the company acquired title to these lands by virtue of the grant made by the State in the charter, or whether it was entitled to the littoral rights incident to the ownership of land bordering on navigable waters, these questions were settled by that statute. If the title of the company was before imperfect, it was perfected by the statute.

" A confirmation by a law, is as fully to all intents and pur-
" poses a grant, as if it contained in terms a grant *de novo*."

Strother v. *Lucas*, 12 Pet., 411.
Grignon's Lessee v. *Astor*, 2 How., 319.
Ryan v. *Carter*, 93 U. S., 78.
Morrow v. *Whitney*, 95 U. S., 551.

It is adjudged in the decree that the Act of April 16, 1869,
" so far, at least, as it confirms the right of the Illinois Central
" Railroad Company, under the grant from the State in its
" charter . . . and under and by virtue of its appro-
" priation, occupancy, use and control, and the riparian owner-
" ship incident to such grant, appropriation, occupancy, use
" and control in and to the lands, submerged or otherwise,
" lying east of the said line running parallel with and four
" hundred feet east of the west line of Michigan avenue, in
" fractional sections ten and fifteen, is a valid and constitu-
" tional exercise of legislative power, and legalizes as well
" what was done by said company prior to April 16, 1869, in
" the way of filling in the lake and constructing wharves, piers,
" tracks, warehouses and other works, between the Chicago

" river and the north line of Randolph street, extended east-
" wardly, as its occupancy and use for way ground of the two said
" triangular pieces of ground immediately south of Randolph
" street; and that the subsequent Act of the general assem-
" bly of Illinois, passed April 15, 1873, in so far as it sought
" by repealing the said Act of April 16, 1869, to revoke or
" annul the confirmatory clause of the last named Act, was
" void under the constitution, both of Illinois and of the United
" States." (Record, 224.)

We do not question the soundness of this judgment. It is manifestly right, so far as it goes; but it is apparent that the effect of the confirmatory clause is much broader than is there stated. The confirmation really covers not only the land north of Randolph street and the triangular pieces of ground referred to, but also the land which the company had reclaimed from the lake south of Randolph street as well; and there is also a distict recognition in the Act of the company's " *riparian* " *ownership* incident to such grant, appropriation, occupancy, " use and control, in and to the lands submerged or otherwise " lying east of the said line running parallel with and four hun-
" dred feet east of the west line of Michigan avenue, in frac-
" tional sections ten and fifteen."

This suggestion will have an important bearing upon a subsequent point in this brief.

IX. By the same Act a further grant was made to the railroad company in the following terms:

" All the right and title of the State of Illinois in and to
" the submerged land constituting the bed of Lake Michigan,
" and lying east of the tracks and breakwater of the Illinois
" Central Railroad Company, for the distance of one mile
" and between the south line of the south pier extended east-
" wardly and a line extended eastward from the south line of

" lot 21, south of and near to the round-house and machine " shops of said company in the south division of the city of " Chicago, are hereby granted, in fee, to the Illinois Central " Railroad Company, its successors and assigns." (*Ante*, p. 21).

The grant was made subject to these conditions: that the title should be held by the company in perpetuity, and all gross receipts derived from the use of the land, or leasing it, or the improvements made thereon, should form part of the gross proceeds, receipts and income of the company, upon which it should forever pay into the State treasury the seven per centum provided for in its charter; that nothing contained in the Act should authorize obstructions to the Chicago harbor, or impair the public right of navigation, or be held to relieve the railroad company or its lessees from any Act of the general assembly which might be thereafter passed regulating the rates of wharfage and dockage to be charged in the harbor; and if any of the granted lands, or the improvements made thereon, should be leased to, or occupied by, anyone but the railroad company, such property should be subject to municipal and other taxation during the continuance of the leasehold estate, or of such occupancy.

It is manifest that the legislature intended to transfer, by this Act, all the proprietary interest which the State had in the granted premises to the railroad company. The words used in the granting clause are words of present grant, and import an immediate transfer of title. There is no subsequent restraining clause. The language admits, therefore, of no other interpretation.

Schulenberg v, *Harriman*, 21 Wall., 44.

Railroad Company v. *United States*, 92 U. S., 733.

Railroad Company v.*Baldwin*, 103 U. S., 426.

Wright v. *Roseberry*, 121 U. S., 488.
Deseret Salt Company v. *Tarpey*, 142 U. S., 241.

The title of the State became completely extinguished, and the entire estate in the land, subject only to the conditions annexed to the grant, became vested in the railroad company. If this were the only question in the case, no one would think of disputing the title of the grantee. The efficacy of the Act to pass the title is in no way impaired by its subsequent repeal.

X. It is erroneously alleged in the information, that no action was taken by the railroad company with reference to the grant before the Act of 1869 was repealed.

The fact is, the grant was formally accepted, and notice of the acceptance was made a matter of record in the office of the Secretary of State long before the passage of the repealing Act. (*Ante*, pp. 24-5). All the grants made to the company by the Act of 1869 were accepted unconditionally; and in the notice thereof given to the State it was explicitly stated, in compliance with the resolution passed by the board of directors, that the company had commenced work upon the shore of the lake *under the grants referred to.* Possession was taken of the granted land, or so much of it as the United States' authorities in charge of the harbor would permit the railroad company to occupy, and costly improvements were made upon the premises before the repeal.

It was objected in the court below that the formal acceptance was nugatory, because the action was taken at a meeting of the board of directors held in the city of New York. But the objection is untenable. The directors of a corporation may hold their meetings and transact business wherever it may be most convenient, unless prohibited by local legislation or the company's charter or by-laws.

1 Morawetz on Priv. Corp., Sec. 533.
1 Beach on Priv. Corp., Sects. 285, 289.
Galveston Railroad v. *Cowdrey*, 11 Wall, 459.
Handley v. *Stutz*, 139 U. S., 417.
Reichwald v. *Commercial Hotel Co.*, 106 Ill., 439.
Saltmarsh v. *Spaulding*, 147 Mass., 224.

Certainly no one could complain of such action but the corporation or its stockholders; and the stockholders at their annual meeting held in Chicago May 31, 1871—nearly two years before the passage of the repealing act—ratified the resolution of the directors by a unanimous vote. (Ante, p. 25.)

It is, moreover, perfectly well settled that the acceptance of a legislative or other grant to a corporation need not be evidenced by a formal vote or resolution. It may be inferred from other acts, as in the case of private persons. Grants beneficial to a corporation will be presumed to have been accepted on very slight evidence of acquiescence, if nothing appear to the contrary.

Bank of the United States v. *Dandridge*, 12 Wheat., 64, 70–72.
Railway Companies v. *Keokuk Bridge Co.*, 131 U. S., 371, 382.
Rotch's Wharf Company v. *Judd*, 108 Mass., 224.

In the case of a conveyance of land by a deed between private parties, anything which clearly manifests the intention of the grantor and grantee that the instrument shall become operative, is sufficient to pass the title. Although the delivery of the deed be not made to the grantee, but to a stranger, assent and acceptance on his part will be presumed if the deed be for his benefit. His previous efforts to obtain a deed, or his subsequent expressions of satisfaction after having pro-

cured it, are sufficient evidence of acceptance by him, and the deed takes effect from the time it is delivered to the third party for his benefit. The deed does not derive its efficacy as a conveyance from the act of the grantee in accepting, but from the act of the grantor in executing it.

Thompson v. *Candor*, 60 Ill., 244.
Dale v. *Lincoln*, 62 Ill., 22.
Gunnell v. *Cockerill*, 84 Ill., 319.
Concord Bank v. *Bellis*, 10 Cush., 276, 278.
Brooks v. *Marbury*, 11 Wheat., 78, 97.
Grove v. *Brien*, 8 How., 429, 440.
United States v. *Schurz*, 102 U. S., 378.
2 Morawetz on Priv. Corp., Sects. 629, 708a.
Angell and Ames on Corp., Sec. 173.

It is not pretended that there is the slightest evidence of any refusal by the company to accept the Act of 1869; nor are any equivocal words or conduct shown on the part of its directors or other agents, which indicate that the company was hesitating or undecided as to its final action. A plan for the construction of wharves upon the submerged lands was prepared as early as May, 1869, which was in part executed; and the failure to complete the work is attributable solely, as the evidence shows, to the refusal of the War Department to permit any improvements to be made by the company in front of the public ground between Randolph street and Park Row, until the question of title should be settled. On the 12th of July, 1869, the first installment of the $800,000 required to be paid to the city for the land granted to the three railroad companies as a site for a passenger depot, was paid to the city comptroller. In the autumn of 1869 work was commenced on pier No. 1, adjacent to the river, which was interrupted July 3, 1871, by an injunction obtained by the U. S. District Attorney, but resumed immediately after the dissolution of the

injunction, January 16, 1872. In 1870 the new line of breakwater was constructed between Twelfth street and Fourteenth street; and a large part of the triangular space outside the breakwater of 1869, north of the south line of Monroe street, marked on the Morehouse map "Built 1873," was filled with earth, prior to the passage of the repealing Act. Between the date of the passage of the Act of 1869 and its repeal in 1873, more than $200,000 was expended by the company upon the submerged lands included in the grant; and it is shown that the company was active during the same period in trying to obtain the consent of the War Department to the construction of wharves south of Randolph street.

These acts can be accounted for only upon the supposition that the act of 1869 had been accepted by the company, and, in the absence of any countervailing proof, are in themselves conclusive evidence of such acceptance.

XI. The repeal of the Act of April 16, 1869, did not divest the title which had become vested in the railroad company. Private rights which have vested under a legislative Act are not affected by a repeal of the law, and cannot be annulled by subsequent legislation. A State does not possess the power of revoking its own grants.

It has been for more than eighty years the settled doctrine of this court, that a grant of land made by a State and accepted by the grantee is an executed contract, within the protection of that clause of the constitution of the United States, which declares that no State shall pass any law impairing the obligation of contracts.

Fletcher v. *Peck*, 6 Cranch, 87.

It appeared in the case cited, that a tract of land had been conveyed by the governor of Georgia under the authority of

an Act of the legislature, which was subsequently repealed. The grantees had conveyed the property to purchasers for a valuable consideration before the repeal, but the principle on which the case was decided was independent of that circumstance. The opinion of the court was delivered by Chief Justice MARSHALL. "The principle asserted is," says the Chief Justice, "that one legislature is competent to repeal any "Act which a former legislature was competent to pass; and "that one legislature cannot abridge the powers of a succeed- "ing legislature. The correctness of this principle, so far as "respects general legislation, can never be controverted. *But* "*if an act be done under a law, a succeeding legislature can-* "*not undo it.* The past cannot be recalled by the most ab- "solute power. Conveyances have been made, these convey- "ances have vested legal estates, and if these estates may be "seized by the sovereign authority, still, *that they originally* "*vested is a fact, and cannot cease to be a fact.* When, then, a "law is in its nature a contract, when absolute rights have vested "under that contract, a repeal of the law cannot divest those "rights; and the act of annulling them, if legitimate, is ren- "dered so by a power applicable to the case of every individ- "ual in the community. . . . The Constitution of the "United States declares that no State shall pass any bill of at- "tainder, *ex post facto* law, or law impairing the obligation of "contracts. Does the case now under consideration come "within this prohibitory section of the Constitution? In con- "sidering this very interesting question, we immediately ask "ourselves, what is a contract? Is a grant a contract? A con- "tract is a compact between two or more parties, and is either "executory or executed. An executory contract is one in "which a party binds himself to do, or not to do, a particular "thing; such was the law under which the conveyance was "made by the Governor. A contract executed is one in "which the object of contract is performed; and this, says

"Blackstone, differs in nothing from a grant. The contract "between Georgia and the purchasers was executed by the "grant. A contract executed, as well as one which is execu- "tory, contains obligations binding on the parties. A grant, "in its own nature, amounts to an extinguishment of the right "of the grantor, and implies a contract not to reassert that "right. A party is, therefore, always estopped by his own "grant. Since, then, in fact, a grant is a contract executed, "the obligation of which still continues, and since the Con- "stitution uses the general term contract, without distinguish- "ing between those which are executory and those which are "executed, it must be construed to comprehend the latter as "well as the former. A law annulling conveyances between "individuals, and declaring that the grantors should stand "seized of their former estates, notwithstanding those grants, "would be as repugnant to the Constitution as a law discharg- "ing the vendors of property from the obligation of executing "their contracts by conveyance. It would be strange if a con- "tract to convey was secured by the Constitution, whilst an "absolute conveyance remained unprotected."

The question whether grants made by the *State* are excluded from the operation of the constitutional provision is next considered; and it was held, that as the words are general and contain no such distinction, the prohibition extends to contracts made by the State as well as to those of private persons.

That decision has never been questioned in this court. *Fletcher* v *Peck* is a leading case, which has been steadily followed in both the State and Federal courts. In *Von Hoffman* v. *City of Quincy*, 4 Wall., 550, it is said that the principles which it maintains "are now axiomatic in American jurispru- "dence, and are no longer open to controversy."

Other authorities to the same effect, to which the attention of the court is respectfully called, are:

Terrett v. *Taylor*, 9 Cranch., 43.

Davis v. *Gray*, 16 Wall., 203.
Hall v. *Wisconsin*, 103 U. S., 5.
Franklin County Grammar School v. *Bailey*, 62 Vt., 467.
See also: Cooley's Const. Lim., 275.

In *Terrett* v. *Taylor*, it was again decided by this court that a legislative grant or confirmation of land vests an *irrevocable* title. "We have no knowledge," say the court, speaking through Mr. Justice STORY, "of any authority or principle "which would support the doctrine that a legislative grant is "revocable in its own nature, and held only *durante bene* "*placito*. Such a doctrine . . . is utterly inconsistent "with a great and fundamental principle of a republican gov- "ernment, the right of the citizens to the free enjoyment of "their property legally acquired. . . . A private corpora- "tion created by the legislature may lose its franchises by a "*misuser* or a *nonuser* of them; and they may be resumed by "the government under a judicial judgment upon a *quo warranto* "to ascertain and enforce the forfeiture. . . . But that "the legislature can repeal statutes creating private corpora- "tions, or confirming to them property already acquired under "the faith of previous laws, and by such repeal can vest the "property of such corporations exclusively in the State, or "dispose of the same to such purposes as they may please, "without the consent or default of the corporators, we are not "prepared to admit; and we think ourselves standing upon "the principles of natural justice, upon the fundamental laws "of every free government, upon the spirit and letter of the "Constitution of the United States, and upon the decisions of "most respectable judicial tribunals, in resisting such a doc- "trine."

In *Davis* v. *Gray*, it was held, where lands had been granted by the State to a railway company, that a subsequent enact-

ment declaring the lands forfeited, the company being in no default, was a mere nullity. That the Act of incorporation and the land grant were contracts, and as such within the protection of that clause of the Constitution of the United States which prohibits a State from passing a law impairing the obligation of contracts, is, it is said, "too well settled in this court "to require discussion." This is made more emphatic by what follows: "When a State becomes a party to a contract, as in "the case before us, the same rules of law are applicable to "her as to private persons under like circumstances. When "she or her representatives are properly brought into the "forum of litigation, neither she nor they can assert any right "or immunity as incident to her political sovereignty."

In *Hall* v. *Wisconsin*, it was held, that a contract between a State and a private person for the performance of certain duties for a specific period at a stipulated compensation, is within the protection of the Constitution. The court say: "When a State descends from the plane of its sovereignty and "contracts with private persons, it is regarded *pro hac vice* as "a private person itself, and is bound accordingly."

In *Franklin County Grammar School* v. *Bailey*, it was held, where lands had been granted by an Act of the legislature to a county Grammar School, which had been some years before incorporated, no right having been reserved to alter or repeal the Act, that a subsequent statute placing the lands under the charge of certain town officers and appropriating the rents to the support of another school, in which a grammar school department was to be maintained, was void as impairing the obligation of a contract. Even if the grant was without consideration, it was an executed gift and could not be recalled. But by accepting it, the grantee took upon itself the duty of leasing and caring for the lands and collecting and applying the rents to the purposes specified in the grant, and this, in the

opinion of the court, was ample consideration, if a consideration was required.

To these authorities might be added the multitude of cases in which it is held that a grant of corporate rights and franchises, accepted by the grantee, is a contract which cannot be impaired by subsequent legislation. Corporations acquire all such rights by virtue of grants from the State. When accepted, they become vested rights and cannot be resumed at the pleasure of the State. They may be forfeited for misuser or nonuser, but only by trial and judgment in due course of law. There is no distinction in law as to the effect of such grants and a grant of *land* made by the State to a private corporation. The State incurs the same obligation in both cases. There can be no ground on which the contract in the one case can be infringed, which will not equally justify the same usurpation of power with regard to the other.

The title acquired under the Act of 1869 could not be annulled by the repeal of the Act, for the additional reason that no State can deprive any person of property without due process of law.

It was said by Chief Justice MARSHALL in *Fletcher* v. *Peck*, "that it may be well doubted whether the nature of "society and of government does not prescribe some limits to "the legislative power." When once a State has conveyed its interest in a tract of land, which it owns, to an individual, the land becomes private property. The State has parted with the control over it, and the grantee immediately succeeds to all the rights of ownership. It is as truly his property as if the title had been derived from another source. The legislature has no more right to interfere with his enjoyment of it, than it has to interfere with the rights of other land-owners. It may make the grant on such conditions as it pleases, and

can enforce their performace; but it can no more rightfully recall the grant, without the consent or default of the grantee, than it can seize arbitrarily upon lands which it never owned.

The right to acquire property, and to be secure in the enjoyment of it when lawfully acquired, has been placed beyond legislative encroachment everywhere in the United States. In some form of words, the constitution of every State contains a provision, that "no person shall be deprived of life, "liberty or property, without due process of law"; and since the adoption of the Fourteenth Amendment in 1868, the same check on the abuse of legislative power has been provided by the Constitution of the United States.

That railroad corporations are within the purview of this provision is settled by repeated decisions of this court.

Santa Clara County v. *Southern Pac. R. R. Co.*, 118 U. S. 394.
Minneapolis Ry. Co. v. *Beckwith*, 129 U. S. 26.
Railroad Company v. *Gibbes*, 142 U. S. 386.

The Act of April 16, 1869, was repealed on the 15th of April, 1873. During the intervening period of four years the title to the land in controversy was vested in the railroad company. The company still holds the title, unless it shall be held that the repealing Act was "due process of law."

XII. It is assumed in the opinion of the court below, that the only object of the legislature in making the grant of the submerged land was to enable the railroad company to construct an outer harbor, and to build, maintain, and lease wharves and docks for the use of shipping; that the railroad company, being interested to some extent in the accomplishment of that object was selected as an agency of the State to undertake the work, and was for that purpose given such an enlargement of its original powers as would enable it to enter

upon and complete it; that the Act imposed on the company no duty or obligation that was enforcible by legal proceedings; and that the grant was in legal effect a mere license, for which nothing was paid, and which it was competent for the State to revoke, if upon considerations of public policy it should think best not to intrust the work to such an agency, provided the company was not deprived without compensation of the use of improvements made distinctly upon the faith of the grant. (Rec., 215-218.)

It is submitted, with great deference, that in this view of the subject there is a clear misapprehension of the legal effect of the Act of April 16, 1869.

It is no doubt true, that the legislature expected that the railroad company would improve the land by the construction of wharves, upon which tracks could be laid to enable cars and vessels to lie side by side, and that by necessary implication power was conferred upon the company to make such improvements. The land was covered by water, and in that state was not fit for the uses to which dry land can be applied. The Act certainly contemplated that the land was to be converted to profitable use by the railroad company, that improvements would be made upon it, and that a revenue would be derived from the use of the land and also from leases. It was made an express condition of the grant that seven per cent. of all such revenue should be paid into the State treasury. The State also reserved the right to regulate the rates of wharfage and dockage to be charged in the harbor.

But it is equally clear, that the use to be made of the land and the character and extent of the improvements to be put upon it, were left wholly to the discretion of the railroad company, subject to but one restriction: that nothing contained in the Act should "authorize obstructions to the Chicago harbor, "or impair the public right of navigation." There was no

requirement that the company should construct a harbor. The only obligations imposed upon the grantee were, that it "should "hold the fee of said lands in perpetuity," and pay into the state treasury a certain proportion of the gross receipts derived from the use or leases of the property aud the improvements which might be made upon it. The company was left free to make any lawful use of the land it should deem expedient, subject only to the restriction above mentioned. The assumption, therefore, that the only object of the legislature in passing the law was to make provision for an outer harbor, is clearly inadmissible. The principal inducement manifestly was to obtain an augmentation of the revenues, already exceedingly large, derived by the State from the Illinois Central Railroad Company. The granted land, in the condition in which it then was, was of no use to anybody and had no appreciable value. The State derived no income from it, and the shallow waters of that portion of the lake were of no practical use for purposes of navigation. But the land was so situated that it might be made useful and valuable by the expenditure of sufficient money. Portions of it were needed for actual use by the railroad company—its terminal grounds in Chicago could be extended in no other direction. That corporation sustained peculiar relations to the State, and the *main* object of the legislature in ceding to it this waste tract of submerged land presumably was, to supply necessary facilities for handling its traffic, and to induce the company to improve the property and make it a source of permanent income to the public treasury.

But admit, for the purpose of the argument, that there was another object, namely, the construction of an outer harbor, and let us suppose this object to have been definitely expressed in the Act: It could avail nothing in support of the repealing statute. In no view of the case can it be main-

tained that the company was employed merely as an agency of the State to make the improvement. It had a beneficial interest in the property; the improvements made upon it would belong to it and not to the State. It had the exclusive power to manage the estate, to make leases at its own discretion, to receive the income, and, after paying the stipulated per centage to the State, to appropriate the residue to its own use.

The Illinois Central Railroad Company, although it has public duties to perform, is not a public corporation. Property acquired by it is in no sense public property, nor is a contract between it and the State less obligatory upon both parties than one made by the State with a private citizen. In accepting the grants made by the State in 1869, the company assented to the conditions expressed in the Act, and the State has the right to insist upon performance of them; but it can require nothing more. Both parties are bound by the terms of the contract, the State as effectually as the railroad company. If the obligations assumed by the latter should not be performed in good faith, the law affords an adequate remedy. Even if there were sufficient cause of forfeiture, the grant could be revoked or vacated only by trial and judgment in due course of law.

The further suggestion that the Act of 1869 was in legal effect a mere license, revocable at any time before the contemplated improvements were completed, at the pleasure of the State, is equally inadmissible. A license is merely an authority to do something upon another's land granted to a person holding no estate therein. The Act of 1869 contains no language which conveys the idea of a mere license, nor anything to indicate that this was at all in the minds of those who framed and passed it. There is no obscurity in the terms, nor any room for doubt as to the intention of the legislature. The oper-

ative words are: "All the right and title of the State of Illi-
"nois in and to the submerged lands" described "are hereby
"granted, in fee, to the Illinois Central Railroad Company, its
"successor and assigns." Next follows the provision, that
"*the fee to said lands shall be held by said company in perpetu-*
"*ity.*" To construe these words as a mere license to enter and construct public works upon land belonging to the State, is obviously impossible. The title to the land became vested by the grant in the railroad company.

The question whether the grant was founded upon a valuable consideration, or whether it was a pure donation, is not material. It is competent for an owner of property, who is under no legal disability, to dispose of his estate as he pleases, if no fraud be committed upon his creditors. He may convey it for charitable or public uses, or he may give it away to any one he chooses without consideration. A deed properly drawn and executed by the grantor as a voluntary gift, will pass the title to the grantee as effectually as if made for a valuable consideration. A want of consideration, in the absence of fraud, is no ground of avoiding a deed. Executory contracts require a valuable consideration to sustain them. But a gift of land or other property completely executed is irrevocable. The thing conveyed becomes the property of the donee, and no subsequent change of mind on the part of the donor will enable him to resume the title. These principles are not less applicable to transactions between the State and its grantees than to those between individuals. A donation made by law is certainly no less valid than a gift *inter partes*.

In *Farrington* v. *Tennessee*, 95 U. S., 683, it is said: "Con-
"tracts are executed or executory. A contract is executed
"where everything that was to be done is done, and nothing
"remains to be done. A grant actually made is within this
"category. Such a contract requires no consideration to sup-

" port it. A gift consummated is as valid in law as anything " else. *Dartmouth College* v. *Woodward*, 4 Wheat., 518."

But the grant in this case was not a mere gratuity. There was a sufficient consideration to sustain even an executory contract. The State was to receive a pecuniary equivalent for the lands granted. The undertaking by the railroad company to hold the title in perpetuity, and to pay forever into the State treasury seven per cent. annually of the gross receipts derived from use or leases of the property and the improvements put upon it, was a valuable consideration in the strictest legal sense. If any consideration was required to support the grant, it is found in this express obligation imposed by the legislature and accepted by the grantee, which is of perpetual duration. And this obligation has been placed by a provision of the constitution of the State of Illinois, enacted since the Act of 1869 was passed, beyond the control of the legislature. (*Ante* p. 42).

XIII: In the cross-appeal taken by the State it is assigned for error, that the court below sustained the validity of the Act of April 16, 1869.

Two objections have been raised to the validity of the Act, which it is necessary to consider.

1. It is objected that the requisite constitutional forms were not observed by the legislature in passing the Act.

The constitution of 1848, in force at the time, provided (Art. 3, Sec. 23) that " every bill shall be read on three different " days, in each house, unless, in case of urgency, three-fourths " of the house where such bill is so depending shall deem it " expedient to dispense with this rule." It also provided (Art. 3, Sec. 13), that " each house shall keep a journal of its pro- " ceedings, and publish them."

The particular objection urged is, that the journal of the

Senate does not show that the bill was read on three different days in that body, nor that the rule was dispensed with by a vote of three-fourths of its members.

The constitution does not expressly require that the three several readings shall be entered on the journals; but it *is* expressly provided (Art. 3, Sec. 21), that "on the final passage "of all bills the vote shall be by ayes and noes, and shall be "entered on the journal; and no bill shall become a law with-"out the concurrence of a majority of all the members elect "of each house."

The Act in question, properly authenticated by the presiding officers of the two houses, was published by the Secretary of State in the volume of public laws of 1869, with his official certificate appended, as required by law. (Laws 1869, 245–248, 411; Gross Stat. 1868, 415, 515–517).

Whether an Act, thus attested and authenticated, is not in itself conclusive evidence that all necessary constitutional forms were observed in the course of its passage; or whether it is competent to show from the journal of either house, for the purpose of invalidating the Act, that some of those forms were omitted, are questions on which there is in the State courts some diversity of opinion.

It has always been held in England that the enrolled Act imports absolute verity, and, therefore, cannot be questioned; and this is the prevailing rule in this country.

Field v. *Clark*, 143 U. S., 649.

But in Illinois, in consequence of the special constitutional provisions relating to legislative proceedings, a different rule has been adopted. It is there held, when the validity of a statute is drawn in question, that it is competent for the court to examine the journals to ascertain whether it was legally passed. The burden of proof, however, is upon the party

assailing the law. *Prima facie*, an Act properly verified is a valid law, of which the court must take judicial notice. To overcome that presumption, the evidence, it is held, must be clear and convincing. It is by no means sufficient to raise a doubt. It must be clearly proved that the requirements of the constitution were not observed. If the journals are lost or destroyed, the presumption that the proceedings were regular will sustain the law.

Spangler v. *Jacoby*, 14 Ill., 297.
Larrison v. *P. A. & D. R. R. Co.*, 77 Ill., 12.
People v. *Loewenthal*, 93 Ill., 192.

The subject has been considered by this court, and it was held in the earliest case by a bare majority of the judges, but not without strong expressions of dissent from the minority, that the rule established in the State courts of Illinois should be followed by the Federal courts in Illinois cases.

Town of South Ottawa v. *Perkins*, 94 U. S., 260.

The same rule has been recognized in two subsequent cases, in which it was also held that the court will take judicial notice of the journals, and that copies of the journals, certified by the Secretary of State, and the printed journals, published in obedience to law, are both competent evidence of the proceedings of the legislature.

Walnut v. *Wade*, 103 U. S., 683.
Post v. *Supervisors*, 105 U. S., 667.

It appears in this case, that the original journals of the two houses, for the legislative session of 1869, are not on file in the office of the Secretary of State, and have not been preserved. What are there known as the House and Senate journals of the twenty-sixth General Assembly, consist of five bound volumes in manuscript, supposed to have been copied from the original

journals. The original journals themselves were deposited in the Secretary's office at the close of the session, and were afterwards sent to the public printer and never returned. (Rec., 167–171.)

On the 26th of March, 1869, a law was enacted (Laws of 1869, p. 48), which provided that thereafter the copying of the journals of each General Assembly should be done under the personal supervision of the Secretary of State, and that *in no case should he permit the originals to be taken out of his office.* It seems that this law, which took effect from its passage, was disregarded. The tradition in the office is, that after the journals were printed they were disposed of as waste paper. (Rec., 169.)

The certified copy of the House and Senate journals, or of so much of the same as relates to the passage of the Act in question, which was put in evidence by the Attorney General (Rec., 551–578), was made from the five bound volumes in manuscript now on file in the Secretary's office. This was supplemented by a further transcript of a portion of the proceedings, also certified by the Secretary of State (Rec., 171, 172); and it was stipulated by counsel for the respective parties that upon the final hearing of the cause in the Circuit Court, or upon the hearing of any appeal in the Supreme Court, either party might refer to the *printed* journals with the same effect as if they had been formally introduced in evidence and incorporated in the record. (Rec., 517.) A transcript from the printed journal was also offered in evidence and made a part of the record. (Rec., 521.)

So far as relates to the present question, there is no important discrepancy between the *printed* journal of the Senate and the transcript produced from the Secretary of State's office. The journals show that the bill was introduced in the House of Representatives January 13, 1869. It was known

as " House Bill No. 373." It passed the House February 20, 1869, and on the same day was sent to the Senate.

The proceedings of the Senate, as shown by the journal, are in substance as follows: The bill was received from the House February 20, 1869. (Record, 574.)

Monday, February 22. The bill was taken up and read a first time. A motion was made that the bill be laid on the table until July 4th, which was lost by a vote of yeas 11, nays 14. It was moved that the bill be ordered to a second reading, which motion was carried by a vote of yeas 15, nays 10. On motion, the bill was laid on the table for the purpose of printing, and two hundred copies ordered printed.

Wednesday, February 24. A motion was made that the bill be taken from the table and referred to a committee, which was carried by a vote of yeas 17, nays 7. On motion, the bill was referred to the committee on the judiciary.

Monday, March 1. The bill was reported from the committee on the judiciary, with a recommendation in favor of its passage. The report of the committee was concurred in and the bill ordered to a third reading. A motion was made to reconsider the last vote.

Friday, March 5. The bill was made the special order for Saturday, March 6, at ten o'clock a. m.

Saturday, March 6. The consideration of the bill was postponed, and made a special order for Monday, March 8, at ten o'clock a. m.

Monday, March 8. The motion to reconsider the vote ordering the bill to a third reading was laid on the table, yeas 14, nays 11. The bill was read a third time; and the question being put " shall this bill pass? " it was decided in the affirmative, years 14, nays 11. The names of those voting on each side are entered on the journal. Ordered that the title be as aforesaid, and that the secretary inform the House of Rep-

resentatives thereof. A motion was made to reconsider the vote by which the bill was passed, which motion was laid on the table by a vote of yeas 14, nays 11.

Wednesday, March 10. The bill was reported to have been correctly enrolled, and to have been laid before the Governor on the 9th of March for his approval.

Friday, April 16. The bill was returned from the House of Representatives, with a message that the Governor had returned the bill to that house with his objections, and that after reconsidering the bill a majority of the members elected to the House had agreed to pass the same notwithstanding the objections of the Governor. The bill was taken up, and the question being "shall this bill pass notwithstanding the objections of "the Governor?" it was decided in the affirmative, yeas 14, nays 11. The names of those voting on each side are entered on the journal. Ordered that the title be as aforesaid, and that the secretary inform the House of Representatives thereof. (Rec. 574–578).

It should be stated in explanation of this final action, that the constitution of 1848, then in force, provided (Art. 4, Sec. 21) that "every bill which shall have passed the Senate and "House of Representatives shall, before it becomes a law, be "presented to the Governor; if he approve, he shall sign it; "but if not, he shall return it, with his objections, to the house "in which it shall have originated; and the said house shall "enter the objections at large on their journal, and proceed "to reconsider it. If, after such reconsideration, a majority of "the members elected shall agree to pass the bill, it shall be "sent, together with the objections, to the other house, by "which it shall likewise be reconsidered; and if approved by "a majority of the members elected, it shall become a law, "notwithstanding the objections of the Governor; but in all "such cases the votes of both houses shall be determined by

" yeas and nays, to be entered on the journal of each house, " respectively."

The Senate at that time consisted of 25 members, and the House of Representatives of 85 members. (Constitution of 1848, Art. 3, Sec. 6; Laws of 1861, pp. 16-22.)

The question to be decided is, whether it clearly appears from the journal of the Senate that the bill was not read a second time in that body, and that the rule requiring a second reading was not dispensed with by the requisite vote?

It will be observed that the bill was ordered to a second reading on the 22d of February. Nothing appears on the journal to show that the rule was not dispensed with and the bill read a second time on that day. The journal is silent as to whether any action was taken upon the bill on the 23d of February. On the 24th, the bill was referred to a committee. It would at that time have been in order to read the bill a second time, without a suspension of the rule, if it had not been done already; and it does not appear from the journal that this action was not taken. The rules of the Senate then in force have been put in evidence, one of which provided that "no bill shall be committed or amended until it shall have been twice read." (Rec., 517.) The presumption, therefore, is, in the absence of evidence to the contrary, that the bill was read a second time before it was referred to the committee. On the 8th of March the bill, as the journal affirmatively shows, was read a *third* time. This imports that it had been previously read twice; and the implication cannot be overcome by the failure of the clerk to record a fact which was not required to be entered on the journal.

The precise question here raised was passed upon by the Supreme Court of Illinois in 1860. The judgment of the court was delivered by Chief Justice CATON, who thus disposes of the objection: "It is objected that the Senate journal does not

"show that the bill was read three times in that body before "it was put upon its final passage, and that hence the consti- "tutional requirements to make it a law were not observed. "The constitution does require that every bill shall be read "three times in each branch of the General Assembly before "it shall be passed into a law, but the constitution does not say "that these several readings shall be entered on the journals. "Some acts performed in the passage of laws are required by "the constitution to be entered on the journals in order to "make them valid, and among these are the entries of the ayes "and nays on the final passage of every bill, and we held in "the case of *Spangler* v. *Jacoby*, 14 Ill., 297, that where the jour- "nal did not show this, the act never became a law. But where "the constitution is silent whether a particular act which is "required to be performed shall be entered on the journals, it "is then left to the discretion of either house to enter it or not, "and the silence of the journal on the subject ought not to be "be held to afford evidence that the act was not done. In "such a case we must presume it was done, unless the journal "affirmatively shows that it was not done. We think this act "was properly passed by both houses of the General Assem- "bly, and when approved by the Governor it became a law."

Supervisors of Schuyler County v. *The People*, 25 Ill., 181.

This decision is referred to with approval in a subsequent case in the same court decided in 1865. The following is an extract from the opinion of the court, delivered by Chief Justice WALKER: "If, upon an inspection of a bill, it is found to "be duly authenticated, and the journals show that it passed "both houses by the number of votes required by the consti- "tution, and the ayes and noes are entered upon the journal, "courts will, if a public law, regard and act upon it as such. " . . . Some acts must appear by the journals to have

"been performed, as well as the proper authentication upon "the bill, before it can be regarded as a law of the land. "Everything which the constitution has required to be entered "upon the journals, in the progreas of a bill through the two "houses, is essential to its binding force, and must appear from "the journals to have been performed. Other acts required "to be done by the two houses, but not required to be "spread upon the journals, will be presumed to have been "done, when a statute appears in other respects to be regular, "unless the contrary appears from the journals themselves. "*Supervisors* v. *The People*, 25 Ill., 181. Such was the rule "adopted in that case, and we see no reason for departing "from it."

Wabash R. R. Co. v. *Hughes*, 38 Ill., 186.

The other Illinois cases, in which the court has referred to the journals to ascertain whether bills were constitutionally passed by the legislature, are cited below. In neither of these cases has the decision in *Supervisors of Schuyler County* v. *The People* been disapproved.

Spangler v. *Jacoby*, 14 Ill., 297.
Turley v. *County of Logan*, 17 Ill., 151.
Prescott v. *Trustees of Illinois and Michigan Canal*, 19 Ill., 324.
The People v. *Starne*, 35 Ill., 121.
The People v. *De Wolf*, 62 Ill., 253.
Ryan v. *Lynch*, 68 Ill., 160.
Miller v. *Goodwin*, 70 Ill., 659.
Larrison v. *Peoria, Atlanta & Decatur R. R. Co.*, 77 Ill., 12.
The People v. *Loewenthal*, 93 Ill., 192.
Wenner v. *Thornton*, 98 Ill., 156.
Burritt v. *Commissioners*, 120 Ill., 322.

Numerous decisions in other States are in accord with the leading Illinois case above referred to.

Miller v. *The State*, 3 Ohio St., 475.
McCulloch v. *The State*, 11 Ind., 424.
The State v. *City of Hastings*, 24 Minn., 78.
English v. *Oliver*, 28 Ark., 317.
Chicot County v. *Davies*, 40 Ark., 200.
The State v. *Francis*, 26 Kan., 724.
In re Vanderburg, 28 Kan., 243.
The State v. *Mead*, 71 Mo., 268.
Attorney General v. *Rice*, 64 Mich., 385.
See also: Cooley Const. Lim., 135, 139.

In Re Duncan 139 U.S. 449

Objection was also made in the court below to the action taken on the bill in the House of Representatives.

It appears from the journal that the bill was introduced in the House January 13, 1869. It was then read a first time and ordered to a second reading. The rule having been dispensed with, the bill was read a second time on the same day, and referred to a committee. On the 4th of February the committee "reported the same back with amendments, and "recommended its passage." (Rec., 552.) On the 10th of February these amendments were concurred in, and further amendments were offered and adopted. The bill as amended was then ordered to be engrossed for a third reading. (Rec., 553–559.) On the 18th of February the bill was reported to have been correctly engrossed, (Rec., 559), and on the 20th of February it was read a third time and passed. The vote on its passage was taken by yeas and nays and entered on the journal. (Rec., 560.) The point urged was, that important changes were made in the bill by the amendments reported from the committee; and that the blll as passed was not read three times in the House.

The journal does not show what the amendments were,

which were reported by the committee; nor is there any evidence in the record which supplies the omission. Indeed, no extraneous evidence would be admissible. It is held in Illinois, that to invalidate a law on the ground that the requirements of the Constitution had not been complied with in its passage, the fact must be shown by the journals. In no other mode can the court be properly advised.

Happel v. *Brethauer*, 70 Ill., 166.
Illinois Central R. R. Co. v. *Wren*, 43 Ill., 77.

The fact that the amendments in question were acted upon without objection and adopted by the House, is conclusive evidence of the regularity of the proceedings. Whether they were many or few, radical or slight, is wholly immaterial. The requirement that bills shall be read three times does not apply to amendments.

The People v. *Wallace*, 70 Ill., 680.

Attention should perhaps be called to the fact, that in the copy of the House journal produced from the Secretary of State's office, a palpable clerical error has been detected in the record of proceedings on the fifth of April. (Rec., 573.)

The bill, having passed both branches of the General Assembly, was returned by the Governor, with his objections, to the House of Representatives where it originated, on the 14th of April. The objections were entered at large upon the journal (Rec., 561, 573,) and on the next day (April 15) the House proceeded to reconsider the bill. The subsequent proceedings on that day, as shown by the amended transcript of the journal obtained from the Secretary of State's office, are as follows:

" A bill (H. B. No. 373) for ' An Act in relation to a por
" tion of the submerged lands and lake-park grounds, lying on
" and adjacent to the shore of Lake Michigan, on the eastern

"frontage of the city of Chicago,' was taken up, and the "House proceeded to a reconsideration thereof. Pending "which, the speaker announced that the hour of adjournment "as fixed by resolution, had arrived, and declared the House "adjourned until 7 o'clock P. M.

"7 o'clock P. M.

"The consideration of S. B. No. 373, was resumed. On "motion of Mr. Dinsmoor, a call of the house was ordered, "and the following members answered to their names: (here "follow the names—present, 73.) A quorum being present, "all further proceedings under the call were dispensed with. "And the question being 'Shall this bill pass, the objections "of the Governor to the contrary notwithstanding?' It was "decided in the affirmative—yeas 52, nays 31. Those voting "in the affirmative are: (here follow the names.) Those "voting in the negative are: (here follow the names.) Or-"dered that the clerk inform the Senate thereof." (Rec., 171, "172.)

It will be observed that the House was engaged in the consideration of the bill when the hour of adjournment arrived. When the House convened again at 7 o'clock, the consideration of the same subject was resumed, but, by a clerical error, the entry on the journal is: "The consideration of S. B. No. 373" (instead of H. B. No. 373), "was resumed." The question (after a call of the House) was then put upon the passage of the bill, which was decided in the affirmative on a call of the yeas and nays.

It may be urged, that in consequence of this clerical mistake, there is no evidence in the journal that House Bill No. 373, which is the bill in question in this case, was passed in the House over the Governor's veto. There is, however, no such imperfection in the *printed* journal. The printed journal of the proceedings of the House on the 15th of April will be found on page 521 of the printed record. The first entry

in that journal, after the resumption of business at 7 o'clock, is this: "The consideration of House Bill No. 373 was resumed"; and there can be no doubt whatever of the accuracy of this record. It appears from the printed journals of that session that Senate Bill No. 373 was a "Bill for an Act to enable the "County of Clark to fund certain indebtedness." The proceedings of the two houses in relation to that bill will be found on pages 518–520 of the printed record. The bill was introduced in the Senate January 22, 1869, and passed on the 8th of February. It was sent to the House February 9th, and there read a third time and passed on the 8th of March. It was presented to the Governor, for his approval, on the 19th of March, and on the 14th of April a message was received from him that he had approved the bill. The act is published in volume 2, Private Laws of 1869, page 308, and it appears there to have been approved March 29, 1869. (Rec., 516.)

It is manifest from these facts, that the record in the copy of the House journal on file in the Secretary of State's office, is erroneous. Such a clerical error, if found in the original journal, could mislead or deceive no one, and would not, therefore, be magnified into importance by the courts.

Walnut v. *Wade*, 103 U. S., 683, 691.

Larrison v. *Peoria, Atlanta and Decatur R. R. Co.*, 77 Ill., 12.

These objections have been noticed at greater length than would have been deemed admissible, in view of the very full and judicious treatment of the subject in the opinion of the Circuit Court, (Rec., 203–206), had it not been thought that a succinct statement of the facts on which they are based, and which are found scattered in various places throughout a very voluminous record, would be of assistance to the court.

2. It is further objected that the Act of April 16, 1869, is repugnant to the clause of the constitution of 1848, which provides (Art. 3, Sec. 23), that "no private or local law which "may be passed by the general assembly, shall embrace more "than one subject, and that shall be expressed in the title."

The question here raised is very fully considered in the opinion of the court below, (Rec., 206--212), and it is scarcely important to fortify reasoning so abundantly strong. But there is one point on which perhaps something more may be appropriately said.

The first inquiry suggested is, whether the Act of 1869 is a private or local law within the meaning of the above regulation?

That it is not *private*, must be conceded. The last section reads as follows: "Sec. 8. This Act shall be a public Act, "and in force from and after its passage." (Rec., 637.) And generally all enactments which directly affect public interests are held to be public. A statute which concerns the public revenue is a public statute.

Unity v *Burrage*, 103 U. S., 447, 454-5.
Binkert v. *Jansen*, 94 Ill., 291.
The People v. *Wright*, 70 Ill., 398.
Sedgwick on Stat. and Const. Law, 25-6.
Potter's Dwarris on Statutes, 53.
1 Black. Com., 86.

It is also a general Act, and not "local," in the legal sense of that term. A statute is general, if it directly affects the interests of the State at large, or relates to the property of the State or the public revenue. Local laws are such as are confined in their operation and effect to a particular section of the State.

Ferguson v. *Ross*, 126 N. Y., 459.

The Act of 1869 relates to or concerns the interests of the public at large. It grants a portion of the public domain to the Illinois Central Railroad Company, a corporation in which all the people of the State are directly interested, and it provides for a revenue to be collected and applied for State purposes. It authorizes that company to make improvements upon the granted lands, from which the State will derive a direct benefit, and which, so far as they furnish additional facilities for transportation by water or rail, will be of service, not solely or mainly to residents in Chicago, but to the general public.

A law providing for a public improvement at a particular place cannot be regarded as local in its character, if it be one of general public utility. Thus, as intimated by the New York Court of Appeals, an appropriation made for the improvement of navigation on the Hudson river, would not be regarded as an appropriation for a local purpose, although the money was to be expended in deepening the channel in a particular part of its course, since the benefit arising from the improvement would not be confined to the people living in the locality, but would be shared by the entire commerce of that great river.

The People v. *Allen*, 42 N. Y., 383.

For the same reason, the appropriations made by the General Government for the removal of obstructions to navigation at Hell Gate in the East river, for the construction of jetties at the mouth of the Mississippi, and for an outer harbor at Chicago, can with no propriety be regarded as appropriations for mere local purposes. A vast commerce, not confined even to any one State, shares in the benefit derived from each of these works. The public at large are interested in such improvements, not merely incidentally, or in some indefinite and remote sense, but directly and materially, as the re-

cipients of the main benefits and advantages arising therefrom.

Reference is made in the opinion to a provision in the constitution of 1870, (Art. 4, Sec. 22) which prohibits the General Assembly from passing "local or special laws" in certain enumerated cases, and this was thought to throw light upon the meaning of the word "local," as used in the constitution of 1848. The word, it is said, evidently has the same meaning in both instruments. But it will be found on examination of the clause referred to in the constitution of 1870, that a law making a grant of lands belonging to the State is not one of those enumerated. There is no provision in that instrument which prohibits the legislature from passing a special Act for that purpose; nor any expression which indicates that such an Act is to be regarded as local.

The Act incorporating the Illinois Central Railroad Company is clearly neither a private nor a local law. It is a special law; but prior to 1870 such laws were not prohibited. The corporation is not local to Chicago; its railroad extends through thirty or more counties. That section of the Act of 1869 by which the grant in question was made to this corporation, is no more local than the law which conferred upon it its corporate rights and franchises. Had the Act contained no other provisions, it would have been valid under any title, or without a title. There is no provision in the constitution of 1848 requiring the subject of such a law to be expressed in the title. The constitutional restriction does not extend to provisions which are neither private nor local; and therefore such provisions are valid although contained in a law with others having a local application, whether embraced within the title or not. As to such provisions the law is neither private nor local, but general and public. This was decided many years since by a court composed of eminent judges, and the decision

has been uniformly adhered to in subsequent cases involving the same question.

The People v. *McCann*, 16 N. Y., 58.
Williams v. *The People*, 24 N. Y., 405.
The People v. *Supervisors*, 43 N. Y., 10.
Richards v. *Richards*, 76 N. Y., 186.
Ferguson v. *Ross*, 126 N. Y., 459.

If, however, it be admitted that the Act of 1869 is local, the objection urged against it is untenable. The constitution required that only one subject should be embraced in a private or local law, and that it should be expressed in the title. The object of the restriction was to prevent surprise or fraud upon the legislature by covertly inserting provisions in bills of which the titles give no intimation, and to apprise the public, through such publication as is usually made of legislative proceedings, of the subjects under consideration, so that those who desire it may have an opportunity of being heard thereon by petition or otherwise. "There was no design to embarrass legislation by making laws unnecessarily restrictive in their "scope and operation, and thus multiplying their number."

Cooley's Const. Lim., 143, and cases there cited.

A similar restriction is found in many State constitutions, and attempts have been frequently made both in the Federal and State courts to invalidate statutes for alleged infringement of it. In these cases certain principles have been established, which furnish in general very clear guidance in passing upon such objections,—among them the following:

a. "This provision of the constitution must receive a fair "and reasonable construction; one which will repress the evil "designed to be guarded against, but which, at the same time, "will not render it oppressive or impracticable."

Belleville Railroad Co. v. *Gregory*, 15 Ill., 29.

Carter County v. *Sinton*, 120 U. S., 522.
Cooley's Const. Lim., 146.

b. "The legislature must determine for itself how broad "and comprehensive shall be the object of a statute, and how "much particularity shall be employed in defining it." "The "generality of the subject expressed in the title is no objection "to it, since it is purely a matter of legislative discretion "whether the subject expressed in the title shall be general or "specific."

The People v. *Nelson*, 133 Ill., 565.
O'Leary v. *County of Cook*, 28 Ill., 534, 538.
Cooley's Const. Lim., 144.

c. If the title adopted is sufficient to apprise the legislators of the general subject of the enactment, every provision therein fairly related to that general subject, or which forms a subordinate branch or part of it, is valid. The fact that many things of a diverse nature are authorized or required to be done, is unimportant, provided they are not foreign to the general subject expressed in the title. "Any expression in "the title which calls attention to the subject of the bill, al- "though in general terms, is sufficient."

Town of Abington v. *Cabeen*, 106 Ill., 200, 207.
The People v. *Blue Mountain Joe*, 129 Ill., 371, 377.
Blake v. *The People*, 109 Ill., 504.
Johnson v. *The People*, 83 Ill., 432.
The People v. *Hazelwood*, 116 Ill., 320.
Louisiana v. *Pilsbury*, 105 U. S., 278, 289.
Montclair v. *Ramsdell*, 107 U. S., 147.
Jonesboro City v. *Cairo and St. L. R. R. Co.*, 110 U. S., 192.
Mahomet v. *Quackenbush*, 117 U. S., 508.

d. "The conflict between the constitution and a statute "must be palpable, to justify the judiciary in disregarding it upon "the sole ground that it embraces more than one subject, or "that, if there be but one, it is not sufficiently expressed in the "title."

Montclair v. *Ramsdell*, 107 U. S., 147.
The People v. *Nelson*, 133 Ill., 575–6.
Cooley's Const. Lim., 183–186.

e. It is not necessary that all the legal effects of an Act should be stated in the title. Where the Act itself is clearly embraced in the title, all legal consequences necessarily flowing from it, will be regarded as embraced within the title also.

Mix v. *Illinois Cent. R. R. Co.*, 116 Ill., 502.
Timm v. *Harrison*, 109 Ill., 594.
Plummer v. *The People*, 74 Ill., 361.
The People v. *Wright*, 70 Ill., 389.

f. If there are parts of a private or local law not embraced in the title, these will be rejected; but this will not defeat the entire Act, if the other provisions are separable and can be enforced independently.

The People v. *Nelson*, 133 Ill., 566.
Donnersberger v. *Prendergast*, 128 Ill., 230.
Binz v. *Weber*, 81 Ill., 288.
Presser v. *Illinois*, 116 U. S., 252, 263.
Unity v. *Burrage*, 103 U. S., 458–9.
Penniman's Case, 103 U. S., 716–17.
Packet Co. v. *Keokuk*, 95 U. S., 80.

The Act of April 16, 1869, is entitled: "An Act in rela- "tion to a portion of the submerged lands and Lake Park "gronnds lying on and adjacent to the shore of Lake Michi- "gan, on the eastern frontage of the city of Chicago." No more appropriate words could have been selected to indicate

the subject of legislation. No one could be misled by the title, or doubt what the subject-matter was to which the bill related.

By *subject* is meant that which is brought under thought or examination; that which is taken up for consideration or action; that which is treated or handled in writing or discourse. This law had but one subject—the disposal of the lands referred to in the title. It is impossible to say that this was more than one subject; but it was general and comprehensive enough to embrace everything contained in the body of the Act. To this there is no constitutional objection. How broad the scope of a local statute shall be, provided it relates to but one subject, is a matter left to legislative discretion. A bill to incorporate a city, or a college, or a railroad company, often contains a great diversity of provisions on minor subjects. Each usually embraces many details, but if they all relate to one general subject it cannot be said that the bill is repugnant to either the letter or spirit of the constitutional provision in question.

A brief reference to a few Illinois decisions may be of service by way of illustration.

A law passed in 1867, entitled "An Act to authorize the town of Ottawa to erect two bridges across the Illinois and Michigan Canal," named certain persons as commissioners to erect two bridges across the canal in the city of Ottawa, and contained a provision that the bridges when constructed should be maintained and kept in repair by the *city*, and another provision that the cost of building the bridges should be defrayed by a tax to be levied on the *town*. It was held that the Act embraced but one subject, and that the subject was expressed in the title. "The adjuncts to that subject," it is said, "are not "required to be expressed or the *modus operandi*."

City of Ottawa v. *The People*, 48 Ill., 233.

A law passed in 1867, entitled "An act to prevent domestic "animals from running at large in the counties of Monroe, St. "Clair and other counties," contained provisions prohibiting domestic animals from running at large in the counties named in the title and several other counties mentioned in the body of the Act. Provision was made for submitting the law to the voters in each county, and to the voters in any precinct of either county, and if a majority of the voters in either of the counties or precincts should so decide, it was to be in force in such county or precinct. It was urged that as the title of the Act referred only to counties, and not to precincts, the subject was not expressed in the title; and further that, inasmuch as several counties were embraced in the law, some of which were not mentioned in the title, the Act contained more than one subject. The court held that the objection was not even plausible. The subject of the Act was the prevention of domestic animals running at large in certain localities. The territory of the several counties was embraced in the subject of the bill, as was each precinct within that territory, and it was decided that the law which had been adopted in one of those precincts was there valid and binding, although rejected by the voters of the county.

Erlinger v. *Boneau*, 51 Ill., 94.

By a law passed in 1867, entitled "An Act to authorize "the city of Belleville, and the town of Mascoutah to issue "bonds," authority was given to the city of Belleville to issue bonds to pay for subscriptions authorized to be made to the capital stock of any railroad, macadam or plank road leading to or from that city; and by a separate section it was provided that the Act should "also apply to, and be in force for the use "and benefit of the town of Mascoutah." By another section the town of Nashville, in another county, was also authorized to avail itself of the benefit of the Act. (1 Priv. Laws 1867, page

841.) Bonds having been issued by the town of Mascoutah pursuant to this authority, a procceding was instituted to contest the validity of the Act. It was urged that the bill contained more than one subject, but the objection was overruled. "According to numerous decisions of this court," says Mr. Justice WALKER, who wrote the opinion, "so far as the Act relating to the city of Belleville and the town of Mascoutah is concerned, there was but one subject-matter. The issue of the bonds "by those municipalities to pay for stock authorized to be "subscribed to any railroad, macadam or plank road, was the "controlling purpose of the law, and the various provisions of "the Act only prescribed the mode of carrying this purpose "into effect. Even if the law is void as to Nashville, we are "at a loss to comprehend in what manner that could affect the "Act so far as it relates to Belleville and Mascoutah. The "doctrine is well established, that although some provisions of "an Act are repugnant to the constitution, the others are "valid if they are capable of being carried into operation; and "there can be no doubt that all relating to Nashville may be "stricken out, and still enough remain to permit Belleville and "Mascoutah to issue and deliver valid and binding bonds. "These are the views entertained when the case of *Decker* v. "*Hughes*, 68 Ill., 33, was before us on a petition for a rehearing, but, as they seemed to be so obvious, they were not expressed in an opinion."

Binz v. *Weber*, 81 Ill., 288.

In 1853, a law was passed entitled "An Act to amend an "Act, incorporating the Ottawa Hydraulic Co. and the La "Salle County Manufacturing Co., both incorporated under the "general law, approved February 10, 1849," by which the corporate existence of both corporations was recognized and their powers enlarged. The Act was assailed on the ground that it was in conflict with that provision of the constitution of 1848, now under consideration; but the objection was not sus-

tained. The court say, "Both corporations were located "and doing business in Ottawa in 1853, when the Act "was passed. Both were incorporated under the general cor- "poration law of 1849, and were alike interested in the water "privileges afforded by the canal at that place. . . . It "can hardly be that this objection is founded upon the fact that "the legislature has, by a single Act, conferred certain pow- "ers and privileges upon two distinct corporate bodies. It "would be just as reasonable to say that the legislature, by "reason of the constitutional provision in question, could not "make a joint grant to two separate persons, and no one, we "presume, would contend for that for a moment. The pro- "vision of the constitution in question has often been before "this court, and we have no hesitancy in saying there is no "good ground for the claim that the Act of 1853 is unconsti- "tional on the grounds suggested."

The People v. *Ottawa Hydraulic Co.*, 115 Ill., 281.

Attention is also invited to:

In re Mayer, 50 N. Y., 504.
People v. *Wilsea*, 76 N. Y., 507.
Hoboken v. *Penn. Railroad Co.*, 124 U. S., 657.
Carter County v. *Sinton*, 120 U. S., 517.
Mahomet v. *Quackenbush*, 117 U. S., 508.
Otoe County v. *Baldwin*, 111 U. S., 1, 16.

The validity of the Act of 1869 was further questioned in the court below, on the ground that it did not pass the two houses under the same title.

The bill, when introduced in the House of Representatives, bore the following title: "An Act to enable the city of Chi- "cago to enlarge its harbor, and to grant and cede all the "rights, title and interest of the State in and to certain lands

" lying on and adjacent to the shore of Lake Michigan on the " eastern frontage of said city." (Rec., 552.) The bill was amended in the House, but retained its original title until it had passed that body. Then, by order of the House, the title was changed to that which it has since borne. (Rec., 560.) The bill was sent to the Senate bearing the amended title, which it afterwards retained. (Rec., 574, 576.)

It has been decided by this court in an Illinois case, that " there is no rule of parliamentary law, and there is no provision of the constitution of Illinois, which requires a bill to preserve the same title through all its stages in both Houses."

Walnut v. *Wade*, 103 U. S., 683, 692.

Although the title is made by the constitution of Illinois an essential part of the bill at the time of its passage, it is not material that the bill passed the two Houses under different titles, so long as either was sufficient to answer the constitutional requirement.

Plummer v. *The People*, 74 Ill., 361.
Johnson v. *The People*, 83 Ill., 432.

The title of the Act in question, at the time of its passage in the House fully answered that requirement. The subject was clearly expressed by the words, " An Act . . . to " grant and cede all the rights, title and interest of the State " in and to certain lands lying on and adjacent to the shore of " Lake Michigan, on the eastern frontage of the city of Chi- " cago." The other words, " to enable the city of Chicago to " enlarge its harbor, and," were, no doubt, superfluous; but they do not vitiate the Act, since the subject-matter is sufficiently indicated by the rest of the title.

Prescott v. *City of Chicago*, 60 Ill., 121.
Binz v. *Weber*, 81 Ill., 288.
Blake v. *The People*, 109 Ill., 504.

It is a further sufficient answer to this objection, that the bill passed the House a second time, after its veto by the Governor, with the same title it bore when it passed the Senate. (Rec., 573.)

XIV. The title asserted by the railroad company under the Act of April 16, 1869, is attacked on several other grounds which require some notice.

1. It has been strenuously insisted that the State has no title in the bed of the Lake which can be transferred by grant to private ownership.

This contention is in irreconcilable conflict with the claim made by the State in the amended information. It is there alleged, that the rights asserted by the railroad company "are a "great and irreparable injury to the State of Illinois as a pro- "prietor and owner of the bed of the lake, throwing doubts "and clouds upon its title thereto, and preventing *an advan- "tageous sale or other disposition thereof*" (Rec., 142); and a part of the relief prayed for is, "that the State of Illinois may "be declared to have the sole and exclusive right to develop "the harbor of Chicago by the construction of docks, wharves, "etc., and to *dispose of such rights at its pleasure.*" (Rec., 143.)

This subject has been adverted to in a preceding part of this brief (Point II.), where a number of pertinent and well-considered cases have been cited. What has been there said need not be repeated. It is sufficient here to remark that nothing is better settled in the law of this country, than that each State has the right to dispose of its property in the soil under navigable waters in any manner it may deem proper.

Weber v. *Harbor Commissioners*, 18 Wall., 57.
Hoboken v. *Penn. Railroad Co.*, 124 U. S., 657.

It is equally well settled, that the legislature of each State has complete control, in the absence of constitutional restrictions, over all the property of the State, and is invested with general authority to make laws at its discretion. To ascertain whether a particular Act is within the power of the legislature, we do not ask if special authority to pass it has been delegated, but we look to see whether the general authority vested in that department has been so limited by the organic law as to make the Act invalid.

The court will search in vain for any provision in the constitution of Illinois prohibiting the General Assembly from granting the title of the State to the soil under navigable waters. There is no such inhibition.

2. It has been further insisted that the grant of the submerged lands was a nullity, by reason of the incapacity of the railroad company to take and hold them.

By its original charter the company was, in express terms, invested with the power of "contracting and being contracted "with," and of "acquiring by purchase or otherwise, and of "holding and conveying real and personal estate, which may "be needful to carry into effect fully the purposes and objects "of this Act." (Rec., 612.) It was certainly competent for the company to take and hold, under this first grant of authority, any part of the lands in controversy which might be required for the management and development of its business. A railroad company has implied authority to build elevators and warehouses for the storage of property transported or to be transported on its road, and if it has a terminus on navigable waters, it has the right to construct wharves and slips to facilitate the transfer of freight from vessels to cars and *vice versa*. Land required for these purposes may be lawfully purchased by the corporation.

1 Morawetz on Priv. Corp., Sects. 368, 370.
Pierce on Railroads, 506.

That there was actual necessity for the immediate use of some of the land granted to the company by the Act of 1869, is conclusively established by the evidence, and must be conceded. *If it had purchased the whole tract from a private owner*, his deed would have passed the title. No one but the State could object that the company was holding property in excess of its legitimate necessities. The State alone could assert its policy in that regard.

National Bank v. *Matthews*, 98 U. S., 621, 628.
Alexander v. *Tolleston Club*, 110 Ill., 65.
Hough v. *Cook County Land Co.*, 73 Ill., 23.
1 Beach on Priv. Corp., Sec. 378.

And if the State by appropriate legislation had given its consent to the purchase, or afterwards confirmed it, the title would be secure against attack even from that quarter.

But the grant in this case came from the State. It emanated from the sovereign authority, which could create corporations or enlarge their powers. Coming from such a source, the grant itself conferred the capacity to take and hold the lands. "A legislative grant operates as a law as well "as a transfer of property, and has such force as the legis-"lature intended."

Schulenberg v. *Harriman*, 21 Wall., 62.

By necessary implication the Act of 1869 gave whatever power was necessary for the enjoyment of the property granted. It is presumed in the case of public grants, as well as in those between private parties, that the grantor intends to convey, and the grantee expects to receive, not only the land specifically described, but all other things, so far as it is in the power of the grantor to pass them, which are necessary for the enjoyment of the land granted.

Chicago, R. I. & P. Ry. Co. v. *Smith*, 111 Ill., 363.

Haps v. *Hewitt*, 97 Ill., 498.
McAuley v. *Columbus, C. & I. C. Ry. Co.*, 83 Ill., 348.
Langdon v. *The Mayor*, 93 N. Y., 144.
Bow v. *Allenstown*, 34 N. H., 351, 372.
2 Dillon's Munic. Corp., Sec. 560.

It is on this principle that a grant of land by a State to an alien and his heirs, is held necessarily to imply that he shall have capacity to transmit by inheritance to his alien offspring, and that they shall have equally a capacity to take, although by the general laws of the State aliens may be incapable of taking by purchase or inheritance.

Goodall v. *Jackson*, 20 Johnson, 707.
Commonwealth v. *Heirs of Andre*, 3 Pick., 224.

3. It is charged in the information that the Act of 1869, "if otherwise legal, was inoperative by reason of the peculiar-"ity in the terms of the grant, the legislature by said pretended "Act purporting to grant the fee to said railroad company, and "by the said pretended Act expressly withholding from said "railroad company the power to grant, sell or convey the "same." (Rec., 139.)

This objection is captious. The granting words are: "All "the right, title and interest of the State of Illinois in and to "the submerged lands constituting the bed of Lake Michigan, "and lying," etc., "are hereby granted, in fee to the said Illinois "Central Railroad Company, its successors and assigns: *Pro-"vided, however*, that the fee to said lands shall be held by "said company in perpetuity, and that the said company shall "not have power to grant, sell or convey the fee to the same, "and that all gross receipts from use, profits, leases or other-"wise of said lands or the improvements thereon, or that may "hereafter be made thereon, shall form a part of the gross

"proceeds, receipts and income of the said Illinois Central "Railroad Company, upon which said company shall forever "pay into the State treasury, semi-annually, the per centum "provided for in its charter, in accordance with the require- "ments of said charter." No language could more clearly express the intention of the legislature. The intention plainly was to ingraft a trust upon the fee, for the benefit of the State in perpetuity. The trust having been created by the law-making power, no legal objection can be made to it.

4. It has also been insisted that the Act of 1869 was ineffectual to pass the title to the submerged lands, because a grant of land belonging to the State could not be made by a mere Act of the legislature.

The constitution of 1848 provided (Art. 4, Sec. 25) that "all grants and commissions shall be sealed with the great seal of State, signed by the Governor or person administering the government, and countersigned by the Secretary of State." It is contended that, by reason of this provision, a formal deed or patent signed by the Governor and attested by the great seal was necessary in all cases to the validity of a grant of land by the State.

This position is not tenable. The constitutional provision in question was not intended as a limitation upon the power of the legislature. It is found in the fourth article of the constitution, which relates to the executive department, and its only object was to prescribe the mode in which grants and commissions, which that department had authority to issue, should be authenticated.

The principle is thoroughly settled by numerous decisions of this court, as well as of the Supreme Court of Illinois, that a perfect grant of land may be made by law, without the issuing of a patent or any other documentary evidence of title.

Strother v. *Lucas*, 12 Pet., 454.

Grignon's Lessee v. *Astor*, 2 How., 319.
Ryan v. *Carter*, 93 U. S., 78.
Morrow v. *Whitney*, 95 U. S., 551.
Whitney v. *Morrow*, 112 U. S., 693.
Ballance v. *Tesson*, 12 Ill., 326.
Hall v. *Jarvis*, 65 Ill., 303.
Keller v. *Brickey*, 78 Ill., 133.
County of Piatt v. *Gumley*, 81 Ill., 350.

These authorities show conclusively that an Act of the legislature making a direct grant of land is higher evidence of title than a patent, because it is the direct grant of the land by the government itself, whereas a patent is only the act of its ministerial officers.

By an Act of the legislature of Illinois approved June 22, 1852 (Laws 1852, p. 178), all the swamp and overflowed lands which had been granted to the State by the Act of Congress approved September 28, 1850, were granted to the counties in which they were situated. Authority was conferred upon the county court of each county to advertise and sell the lands at public sale, and to execute deeds to the purchasers. No provision was made for the issuing of any patent by the State. None of these lands—probably exceeding in the aggregate two million acres—all or nearly all of which are now in the hands of private purchasers, are held under any patent. In *Keller* v. *Brickey*, above cited, it was held that the State had by competent authority passed the title to these lands to the counties, and that a deed executed by the county clerk *vested in the purchaser the absolute title in fee simple to the land described in it.* In *County of Piatt* v. *Gumley*, *supra*, it was held that the county could maintain *an action of ejectment* to recover a tract of land, which had been certified to the county as swamp land by the State auditor pursuant to the provisions of the Statute.

But the point here raised has been passed upon by this court in a case almost precisely analogous. In the year 1782, the legislature of North Carolina passed an Act granting 25,000 acres of land to Major General Nathaniel Greene, his heirs and assigns. The constitution of North Carolina at that time contained this provision: "That there shall be a seal of "this State, which shall be kept by the Governor, and used by "him as occasion may require; and shall be called the great "seal of the State of North Carolina, and be affixed to all "grants and commissions." In a suit involving the title to some of those lands, it was objected that the legislative Act could not have effect as a grant, since it wanted the formality required by the constitution. The objection was not sustained. In the opinion of the court, delivered by Chief Justice MARSHALL, it is said: "This provision of the constitution is so "obviously intended for the completion and authentication of "an instrument, attesting a title previously created by law, "which instrument is so obviously the mere evidence of prior "legal appropriation, and not the act of original appropriation "itself, that the court would certainly have thought it unnec-"essary to advert to it, had not the argument been urged re-"peatedly, and with much earnestness, by counsel of the high-"est respectability."

Rutherford v. *Greene's Heirs*, 2 Wheat., 196.

This ruling is referred to with approval by Chief Justice Taney, in delivering the opinion of the court in

Fremont v. *United States*, 17 How., 559.

But, if it were conceded that these decisions are erroneous, and that the formality of a deed or patent was necessary to the complete transfer of the legal title, it would not follow that the Act of 1869 was inoperative. If not effectual as a grant, it would still be binding on the State as a contract. At most, it could only be said that the legal title had not passed. It

could not be denied that the equitable title had vested in the company. In that aspect of the case, the State is in the attitude of a party asking the aid of a court of equity in doing what is contrary to the first principles of equity.

5. There is another point put prominently forward in the information, to the effect that the land in Fractional Section Fifteen Addition to Chicago, lying east of Michigan avenue and between Park Row and the center line of Madison street extended, was granted by the State to the Canal Trustees in 1845, and that the title remained in them until they reconveyed the property to the State in 1871. It is contended that during the intermediate period the State had no title which it could convey to the railroad company; and further, that this is a part of the land granted to the State by Congress in 1827 to aid in the construction of the canal, and that it could be sold by the State only for the purpose of procuring funds to complete or maintain that work.

On this ground it is claimed that the railroad company acquired no right under its charter, or the city ordinance of 1852, or the Act of April 16, 1869, to enter upon any part of that land and appropriate it to railroad or other uses.

All the material facts on which this contention is based are set forth on pages 10 to 15 of the opening statement.

It is true that fractional section fifteen was one of the tracts of public land granted to the State by Congress in 1827 to aid in opening the canal. But express provision was made in the Act, that the State, under the authority of its legislature, should "have power to sell and convey the whole or any part of the said land, and to give a title in fee simple therefor" to the purchasers. There was also a further provision that, if the canal should not be commenced and completed within the time specified, "the State shall be bound to pay to the United

States the amount of any lands previously sold, and that the title to purchasers under the State shall be valid." (Rec., 580.)

It is clear that no trust was attached to the lands; nor was the discretion of the legislature in disposing of them in any way controlled by the Act. Certainly the State could not rescind its grant on the ground that it had failed to perform its duty.

Emigrant Company v. *County of Adams*, 100 U. S., 61.

Mills County v. *Railroad Companies*, 107 U. S., 557.

Hagar v. *Reclamation District*, 111 U. S., 701.

But there has been no default on the part of the State. The canal was completed in 1848 (Rec., 507), and continuously since then has been open to the use of the public.

In 1836 the canal commissioners, pursuant to the provisions of an Act of the legislature approved January 9, 1836, laid off fractional section fifteen into town lots, and caused a map of the division to be made and recorded. (See *ante*, p. 11.) It is alleged in the information that only a *part* of the tract was subdivided—that the subdivision "did not extend east of Michi-"gan avenue, as the same is now occupied and used, except a "narrow strip on the south end thereof." (Rec., 127.) But the law under which the commissioners were acting, directed that the whole fractional section should be "laid off and subdi-"vided into town lots, streets and alleys" (Rec., 592); and the map of the subdivision, which was put in evidence, shows upon its face that the entire tract was subdivided in conformity to that requirement. (Rec., *1191*.)

In front of the easterly row of lots, a wide street, occupying the whole space between them and the lake, is laid out on the map styled "Michigan avenue." One of the witnesses for the complainant (Mr. Scammon) testifies that it was the habit-

ual practice in laying out towns on the shores of rivers in the southern part of the State, to leave a wide margin along the river for a levee, and that Gen. Thornton, who was "the con- "trolling spirit of the board of commissioners," caused that plan to be adopted by the board in making this subdivision. Michigan avenue (he says) was laid out on the plat as a wide levee extending to the lake; and the lots "were prized a great deal higher "and brought a good deal more money, because they fronted on "this wide street that extended to the lake." (Rec., 443.) The map itself furnishes conclusive evidence of the intention of the commissioners to dedicate the entire strip to public use.

Village of Brooklyn v. *Smith*, 104 Ill., 429.

In laying out the subdivision, the commissioners appear to have complied generally with the provisions of the law then in force relating to town plats. (*Ante*, pp. 11, 12.) The only deviation worthy of notice is, that the surveyor's certificate was made by an engineer in the employment of the canal commissioners, instead of the county surveyor; but the Supreme Court of the State seem to have decided, that in the case of plats made by the canal commissioners such a departure from the strict letter of the law is not material.

City of Chicago v. *Rumsey*, 87 Ill., 348.

Zinc Company v. *City of La Salle*, 117 Ill., 411.

Although, as held in a recent decision, when land is laid out by other proprietors than the State, if the plat is not certified by the county surveyor, the legal title to the streets does not vest in the town or city.

Village of Auburn v. *Goodwin*, 128 Ill., 57.

If the plat in question is to be regarded as statutory, the legal title to the ground designated thereon as Michigan avenue became vested in the town of Chicago, upon the recording

of the plat. The plat in such case has all the force of an express grant. It operates by way of estoppel, and concludes the former owner and all claiming under him from asserting title. Upon the vacation of the streets, the title reverts to the former owner; but until the estate is thus defeated, it is held that the fee is as completely out of him as if he had made an absolute conveyance. "While the fee continues in the cor-"poration, he has no greater interest in the streets and alleys "than any other person—the right of passage over them. "Having neither the legal title nor the exclusive right of pos-"session, he cannot bring trespass for any injury to the soil or "freehold. He has no title to be assailed, no possession to be "invaded."

Zinc Company v. *City of La Salle*, 117 Ill., 414, 415.
Gebhardt v. *Reeves*, 75 Ill., 301.
Hunter v. *Middleton*, 13 Ill., 50.
Canal Trustees v. *Havens*, 11 Ill., 554.

If it was not a statutory plat, although the legal title to the streets did not vest in the town, the public acquired the same rights it would have had in them if the fee had passed to the municipality.

Maywood Company v. *Village of Maywood*, 118 Ill., 61.
Gould v. *Howe*, 131 Ill., 490.

The lots, it is proved, were sold by the commissioners as laid out upon the plat and with reference to the plat. The purchasers of the lots, therefore, acquired a special interest in the streets on which their lots abutted. It is manifest that neither the canal commissioners nor the State could after the sale of the lots, make any disposition of the streets inconsistent with the use to which they had been dedicated.

In either case, it is clear that after the sale of the lots there

was no canal land left in fractional section fifteen undisposed of.

The grant made by the State to the canal trustees in 1843, to secure the payment of the loan then about to be negotiated (*ante*, p. 13), included the canal and "all the remaining lands and lots belonging to the canal fund." The supplemental Act of March 1, 1845 (*ante*, p. 14), provided for the execution of a deed to the canal trustees as security for the loan, which was to "include the lands and lots remaining unsold donated by the United States to the State of Illinois, to aid in the completion of the said canal."

In the deed executed by the Governor June 26, 1845 (*ante*, p. 14), these Acts are recited at length, and it is declared that the conveyance is made "to and for the uses and purposes in "said Acts expressed and intended." No lands were specifically described in either of the two Acts or in the Governor's deed; and as the State had then no property left in fractional section fifteen available for canal purposes, it is apparent that no land in that section passed under the general description contained in the Acts and deed.

It is not pretended that the canal trustees ever asserted title to the public ground in that section. The theory that they had a title is a late invention, first announced in 1884 (Rec., 43)—a year after the institution of the present suit, and more than forty years subsequent to the act of 1843.

But the grant to the canal trustees, whatever it included, was made in trust, to secure a loan. It was an express condition of the trust, that when the debt should be paid the canal and the remaining canal property and assets should revert to the State. The legal title to the property covered by the trust passed to the board of trustees, but an equitable estate remained in the State. It was competent for the legislature to transfer this estate at its pleasure. Any mortgagor may

sell and convey his equity of redemption in a tract of land; and no reason is or can be suggested why this right may not be exercised by a sovereign State, which, in addition to the ordinary rights of a land owner, has also the power to enact laws. The charter of 1851, and the Act of 1869, by which cessions of land were made to the railroad company, were enacted by the legislature and have the force of laws. As the right of the legislature to make the laws is unquestionable, it is impossible to impeach the validity of the grants. If any of the property ceded was covered by the trust created to secure the payment of the canal debt, the company took the encumbered portion subject to the trust, just as one who buys mortgaged property takes subject to the mortgage; but when the debt was paid and the trust terminated, the title of the company became absolute and indefeasible. It is proved that the trust was fully executed and the canal debt extinguished in 1871. (See *ante*, p. 15.)

The fact is, moreover, that no ground is occupied by the railroad company which in 1852 formed part of fractional section fifteen. The railroad was located and built in *front* of the public ground, at some distance from the shore, in the open waters of the lake. Some portion of the ground occupied —how much is uncertain—appears to have been dry land in 1836; but in 1852 all of it was covered by water, varying in depth in different places from two and a half to nine feet. (See *ante*, p. 9.) It had ceased to be part of fractional section fifteen, and had become part of the bed of the lake.

6. Lastly, it has been contended that the grant made to the railroad company by the Act of 1869 was annulled by Section 2, Article XI, of the constitution of 1870, which went into effect August 8, 1870.

Article XI of the constitution of 1870 is entitled "Corporations". It contains fifteen sections, all of which relate to the subject of corporations. The first two sections are as follows:

"Sec. 1. No corporation shall be created by special laws, "or its character extended, changed or amended, except those "for charitable, educational, penal or reformatory purposes, "which are to be and remain under the patronage and control "of the State, but the general assembly shall provide, by "general laws, for the organization of all corporations here- "after to be created.

"Sec. 2. All existing charters or grants of special or exclu- "sive privileges, under which organization shall not have taken "place, or which shall not have been in operation within ten "days from the time this constitution takes effect, shall there- "after have no validity or effect whatever."

The remaining sections prescribe certain general rules for the regulation and government of incorporated companies; and no provision is found in the article on any subject not directly and closely connected with the exercise of corporate powers.

The second section forms no exception. The object of that provision is well understood by the profession in Illinois, and is clearly enough disclosed by its own words. In anticipation of a revision of the constitution of 1848, and of the restraints which would probably be placed upon the legislative power of granting special charters to private corporations, a great many private Acts of incorporation had been procured between 1865 and 1870, under which no organization had been effected, and which were then held by the corporators for sale or transfer to other parties, as opportunity might occur. The private laws of 1865 filled two large octavo volumes; those enacted in 1867, three volumes; and those enacted in 1869, four volumes. The object of this constitutional provision was to va-

cate all charters under which no rights should become vested within the time designated; and the enactment applies *only* to "charters or grants of special or exclusive privileges."

The Act of 1869 was neither a charter nor a grant of special or exclusive privileges. It contained a grant of *land* to a corporation *already* organized, and took effect immediately upon its passage. It was not the object of this clause of the constitution to revoke any grant of public property which the State had made. Such grants could not be revoked by the State, either by legislative Act or by amending the constitution. The grant made by the Act of 1869 was formally accepted by the railroad company before the constitution of 1870 went into effect, and it was assented to and informally accepted immediately after the passage of the Act. Notice of the acceptance was on file in the office of the Secretary of State, and a large amount of money had been already expended by the company in improvements upon the property.

XV. The pretensions of the city of Chicago to a part of the land in controversy remain to be considered.

1. The claim is advanced by the city in its answer to the amended information and in the cross-bill, that it had acquired a vested interest in the submerged land lying east of the breakwater between Randolph street and Park Row, before April 16, 1869, of which it could not be deprived by the legislature without compensation. For this reason, it is insisted that the grant made to the railroad company by the Act of 1869 was invalid, and the repeal of the Act in 1873 was, therefore, free from constitutional objection.

There is often no better way of refuting an extravagant proposition than by stating it clearly. The contention is, that by the making and recording of the plats of Fractional Section Fifteen Addition (in 1836) and Fort Dearborn Addition (in

1839), the legal title to the public ground lying east of Michigan avenue, between Randolph street and Park Row, became vested in the city, with all the littoral rights appertaining to the land as it was then situated. These rights, it is asserted, were rights of private property vested in the city, which are protected from disturbance by the legislature, both by the constitution of Illinois and the constitution of the United States. (Rec., 106, 107, 113, 114.)

The moment we examine this theory closely it is seen to be fallacious. We are not obliged to enter upon the question, whether it was the legal effect of the plats, or either of them, to vest the fee of the streets in the city. If it be conceded that they had such effect, it is perfectly clear that the city took and held the title wholly for public purposes. It acquired no private, beneficial interest in the streets. It could not alien or otherwise dispose of them for its own private benefit. At most, it held a naked legal title in trust for the benefit of the public —not exclusively the citizens of Chicago, but all the inhabitants of the State.

City of Alton v. *Illinois Trans. Co.*, 12 Ill., 38, 60.
Stack v. *City of St. Louis*, 85 Ill., 377.
Kreigh v. *City of Chicago*, 86 Ill., 407.
Lee v. *Town of Mound Station*, 118 Ill., 305.

The title was held by the city in its political capacity only, as a mere agency of the State, for the benefit of the general public; and the trust being *publici juris*, it was under the supreme control of the legislature.

City of Chicago v. *Rumsey*, 87 Ill., 348, 355.
The People v. *Walsh*, 96 Ill., 232.
Harris v. *Board of Supervisors*, 105 Ill., 445.
Lyman v. *Gedney*, 114 Ill., 388.
East Hartford v. *Hartford Bridge Co.*, 10 How., 511.

Meriwether v. *Garrett*, 102 U. S., 472.
Hoboken v. *Penn. Railroad Co.*, 124 U. S., 657, 693.
The People v. *Kerr*, 27 N. Y., 188.
City of Clinton v. *Cedar Rapids and Mo. R. R. Co.*, 24 Iowa, 455.
2 Dillon's Munic. Corp., Sects. 656-7.

In the *City of Chicago* v. *Rumsey*, *supra*, a question arose as to the right of the legislature to authorize the occupation of a portion of one of the streets of Chicago, which had been laid out by the canal commissioners on a recorded plat, for an approach to a tunnel under the river. In the argument, the point was made that the plat was not properly acknowledged, and, therefore, that the fee in the street was not vested in the city. Referring to that question, the court say:

"We do not regard it of any practical importance whether "it is more technically accurate to say the fee of this street is "in the State, or in the city. If it shall be said to be in the "corporation, there can be no pretense for saying that it is in "it otherwise than as an agency—a mere creature of the "State—existing only by authority of the legislature, and at "all times under its paramount supervision and control; and "if it shall be said to be in the State, it can only be said to be "there for the purpose of holding it for a street of the city; "and in either case, the sole purpose and end to be attained is "precisely the same—the holding it for the uses of a street of "the city for the benefit of the public—not the citizens of the "city alone, but the entire public of which the legislature is "the representative. There could, therefore, be no necessity "for any formal act of conveyance or dedication of the fee; it "was already as completely under the paramount authority "and control of the legislature as it could possibly be for the "purposes of a street, and no conveyance or formal act of ded-

"ication by the State to the municipality could have invested "it with a more exclusive interest in or control over the street, "than was done by the Act of the legislature directing it to be "laid out as such. Cities, towns, etc., possess and can exer- "cise only such authority and control in regard to their streets "as may be delegated by the legislature. They have no in- "herent power or authority in this respect, and can act only "in subordination to the paramount authority of the legisla- "ture."

In *East Hartford* v. *Hartford Bridge Co.*, *supra*, it was held to be competent for the legislature to withdraw from a town a ferry franchise which had been previously granted to it. The decision is put upon the ground that legislative acts conferring such privileges upon towns must be regarded rather as public laws than as contracts. They relate to public interests; and the grantees, being mere organizations for public purposes, are liable to have their public powers, rights and duties modified or abolished at any moment by the legislature. "They are in- "corporated," say the court, "for public, and not private, "objects. They are allowed to hold privileges or property "only for public purposes. The members are not shareholders, "nor joint partners in any corporate estate, which they can "sell or devise to others, or which can be attached or levied "on for their debts. Hence, generally, the doings between "them and the legislature are in the nature of legislation rather "than compact, and subject to all the legislative conditions "just named, and therefore to be considered as not violated by "subsequent legislative changes."

In *Hoboken* v. *Penn. Railroad Co.*, *supra*, it was held that the State of New Jersey, being the absolute owner of the land under tide water, had the right to make a grant of such land adjacent to the shore, discharged from any easement the city may have had in front of streets which extended to the water.

"The public right represented by the plaintiff (the city) is," it is said, "subordinate to the State and subject to its control. "The State may release the obligation to the public, may dis- "charge the land of the burden of the easement, and extin- "guish the public right to its enjoyment. Whatever it may "do in that behalf conclusively binds the local authorities, "when, as in the present cases, the rights of action are based "exclusively on the public right."

In *The People* v. *Kerr*, *supra*, it is held, that although an indefeasible title in fee to the streets in the city of New York is vested in the municipality, yet "this is a trust for the bene- "fit of the public, not of the adjacent proprietors alone, nor of "the inhabitants or citizens of New York alone, but of the "whole people. The whole people have the same rights in "the highway uses of such a public street as the inhabitants of "the city or the owners of adjacent land. The title thus vested "in the city of New York is as directly under the power and "control of the legislature, for any public purposes, as any "property held directly by the State, or by any public body "or officer, and its application cannot be challenged by a cor- "poration, which, in respect to such property, at least, is a "mere agent of the sovereign power of the people."

In *City of Clinton* v. *Cedar Rapids and Mo. R. R. Co.*, *supra*, the Supreme Court of Iowa, speaking through Chief Justice DILLON, say: "The true view is this: Municipal corporations "owe their origin to, and derive their powers and rights "wholly from, the legislature. It breathes into them the "breath of life, without which they cannot exist. As it "creates, so it may destroy. If it may destroy, it may abridge "and control. Unless there is some constitutional limit on the "right, the legislature might by a single Act, if we can sup- "pose it capable of so great a folly and so great a wrong, "sweep from existence all of the municipal corporations of the "State, and the *corporation* could not prevent it. We know

"of no limitation upon this right so far as the corporations "themselves are concerned. They are, so to phrase it, the "mere tenants at will of the legislature. . . . But while "the corporation exists, and has been allowed to acquire *pri-* "*vate* property, such property is doubtless protected by the "constitutional provision the same as the private property of "the citizen. The distinction is just here. A city by its con- "stituent Act may be authorized to acquire property for a "market-house, a public hall or the like. Of this property the "city cannot be deprived by legislative Act, except it be taken "for public use, and if so taken, the city is entitled to compen- "sation. *But its property in the public streets is not of this na-* "*ture.* The city cannot alien it, nor use it for any other than "legitimate purposes. Over the use of property acquired by "the exercise of the right of eminent domain, or dedicated "under the statutes to public use, when the soil, the fee, "passes from the dedicator, the legislature, so far as regards "the rights of public corporations, possesses an unlimited con- "trol."

The theory maintained by the city is diametrically opposed to the principles established in the foregoing cases. It rests upon the unfounded assumption that the streets and public grounds in the city are held by the same tenure as private property owned by individuals. This clearly is not the law. The city had no vested private interest in the public ground on the lake shore, and could, therefore, have no private interest in the littoral rights, which are simply incidents of the principal estate. It held the title for public purposes only, and as a trustee for all the people of the State, of whom the legislature is the sole representative.

It is not pretended that the city has ever constructed a wharf east of the breakwater, or made any expenditures for improvements in that part of the lake. No title to the soil under water was ever granted to the city, nor has it ever had possession

of any part of the lands in controversy. It is, therefore, evident that the act of 1869 deprived the city of no property in the bed of the lake, nor did it impair any vested rights of the city or the obligation of any contract.

Reference is made in the answer and cross-bill filed by the city to several Acts of the legislature passed prior to 1869 (Rec., 106–7, 113–14), which, it is contended, furnish some support to the claim now under examination. By these acts certain general powers were conferred upon the common council of Chicago, and, among them, the following:

By the Act of March 4, 1837—by which the city was first incorporated,—

"To prevent all obstructions in the waters which are public "highways in said city."

"To lay out . . . streets . . . in said city, and "make wharves and slips at the end of the streets, on prop- "erty belonging to the city." (Rec., 537.)

By the Act of February 16, 1847—

"To lay out . . . streets . . . in said city, and "make wharves and slips at the end of streets."

"To build and construct a breakwater or barrier along the "shore of Lake Michigan for the protection of the said city "against the encroachments of the water."

"To pass all such ordinances as they may think proper to "preserve the harbor; . . . to prevent and remove all "obstructions therein, and to punish the authors thereof. ". . . The word 'harbor,' as used in this section, shall "be taken and deemed to include so much of Lake Michigan "as lies within the distance of one mile from the shore thereof, "into the lake, and the Chicago river and its branches, includ- "ing the piers." (Rec. 539–40).

By the act of February 14, 1851—

"To lease the wharfing privileges of the river, at the end "of streets."

"To preserve the harbor; . . . to prevent and re- "move all obstructions therein, and to punish the authors "thereof."

"To levy and collect taxes . . . for the erection of a "barrier to protect the city from the lake."

"To lay out public squares or grounds, streets, alleys, "lanes and highways, and to make wharves and slips at the "ends of streets." (Rec. 540–542).

By the act of February 13, 1863, the last provisions were re-enacted, with the exception of the clause authorizing taxes to be levied for the erection of a barrier to protect the city from the lake. (Rec. 545--6).

These were all the powers relating to the construction of wharves and slips, which were granted to the city prior to the passage of the Act of April 16, 1869. The contention is, that they authorized the city to construct wharves and slips in the waters of the lake, in front of the public ground between Randolph street and Park Row, and that the power was irrevocable.

The suggestion is utterly preposterous. The authority conferred was, to "make wharves and slips at the ends of streets"; and as there were, in fact, no streets ending at the lake, between the mouth of the river and Sixteenth street, prior to the extension of Randolph street in 1880, it is plain that the city could not without an usurpation of power construct a wharf anywhere on the premises in controversy. The practical construction put upon these provisions of the old charters always was, that they related only to wharves and wharfing privileges

at the ends of the streets terminating at the river. There wharves were built by the city, but nowhere else. It was not until 1854 that any part of the lake was even included within the corporate limits of the city (Rec. 543), although police jurisdiction was exercised over the adjacent waters within one mile of the shore.

The ground which was appropriated by the railroad company in 1852 in front of the shore, was then outside of the boundaries of the city. By that occupation a strip of land two hundred feet in width was interposed between the public ground and the lake. This was done with the consent of the common council and pursuant to the terms of a formal contract between the city and the company executed under their corporate seals. The company was entitled to the exclusive possession of that strip, and, as we insist, was also the owner in fee. The city reserved no right to construct wharves beyond it. It did not have even the right of access to the water east of the breakwater. It had no street or other ground upon the shore in contact with the navigable water. This was the situation in 1854, when the city limits were extended, and it remained unchanged in 1869.

The rule of strict construction is applied by the courts to charters of public as well as private corporations. Any reasonable doubt as to the extent of the authority conferred, especially if it relates to a matter extra municipal in its nature, or affects the right of the State to the control and disposition of its own property, will be determined against the corporation. As has been said by this court, "it is a well settled rule "of construction of grants by the legislature to corporations, "whether *public* or private, that only such powers and rights "can be exercised under them as are clearly comprehended "within the words of the Act or derived therefrom by neces- "sary implication, regard being had to the objects of the

" grant. Any ambiguity or doubt arising out of the terms " used by the legislature must be resolved in favor of the " public."

Minturn v. *Larue*, 23 How., 436.

The same principle has been repeatedly declared by the courts, in a variety of cases.

See 1 Dillon's Munic. Corp., Sects. 89–91, and cases there cited.

To give to the terms of the old charters the effect contended for by the city, this rule must be completely reversed. Another rule of law must also be violated. The right given to construct wharves at the ends of streets, was nothing more than a license, revocable, in respect to any street, at any time before it had been acted upon. Like all other municipal powers of a public character, it was subject to legislative control and could be modified, restrained or entirely withdrawn as the public exigencies might require.

United States v. *Railroad Company*, 17 Wall., 322, 328–9.

Mount Pleasant v. *Beckwith*, 100 U. S., 514, 525.

Railroad Company v. *Ellerman*, 105 U. S., 166.

Williamson v. *New Jersey*, 130 U. S., 189.

Essex Public Road Board v. *Skinkle*, 140 U. S., 334.

New Orleans v. *N. O. Water Works Co.*, 142 U. S., 79.

2 Dillon's Munic. Corp., Secs., 68, 103, 110 n.

2. These objections of the city to the Act of 1869, were not sustained in the court below. But effect having been given to the repealing Act, it was thereupon decided that the city as *riparian owner*, and by virtue of authority conferred by its charter, has the power to erect and maintain public landing

places, wharves, docks and levees, east of the railroad, betweeen the north line of Randolph street and the north line of block 23, subject to the authority of the State by legislation to establish an exterior dock line, and to such supervision and control as the United States may lawfully exercise in and over the harbor. (Rec. 222.)

If the grant made to the railroad company in 1869, was valid, and it was incompetent for the State to recall it, this ruling must obviously be reversed; and the same result will follow, if it shall be held that the city was not in fact the riparian owner. The first two questions have been already discussed. The last remains to be considered.

Riparian rights are rights incident to land contiguous to the water. According to the uniform tenor of all the authorities, the party claiming such rights must show that he owns or has the exclusive right to occupy and use the shore. "They do not attach to any lands, however near, which do not extend to the water."

Potomac Steamboat Co v. *Upper Pot. Co.*, 109 U. S., 672, 682–3.
Saulet v. *Sheppard*, 4 Wall., 502.
Bates v. *Illinois Central R. R. Co.*, 1 Black, 204.
Jones v. *Johnson*, 18 How., 150.
Bristol v. *County of Carroll*, 95 Ill., 84.
Gould on Waters, Sec. 148.

Does the city own any land in contact with the lake? On this question, the learned judges below differed in opinion. One thing is clear: The land next to the lake is occupied by the railroad company, and it has been decided in this case that the company is entitled to the exclusive possession and control of it in perpetuity. It is held, in the prevailing opinion, that

the company has only an easement, and that the fee is in the city.

If this ruling were correct, the result reached in the Circuit Court would not necessarily follow. Strong support is furnished by the authorities for the proposition, that a railroad company which acquires a perpetual right to the exclusive use and possession of land abutting upon navigable waters, is also entitled to enjoy the riparian rights incident to the land (if there has been no reservation of them by the former proprietor), although it does not own the fee.

Hanford v. *St. Paul and D. R. Co.*, 43 Minn., 104.
Godfrey v. *Alton*, 12 Ill., 30.
Cook v. *Burlington*, 30 Iowa, 94.
New Orleans v. *United States*, 10 Pet., 662.
Barney v. *Keokuk*, 94 U. S., 324.
Potomac Steamboat Co. v. *Upper Pot. S. Co.*, 109 U. S., 672.

So if land bordering upon a lake or a navigable stream is leased, the lessee will hold the accretions precisely as he does the land to which they have become attached. If it is mortgaged, or under any other lien, all subsequent accretions will come under the same burdens as those to which the land was subject before the accretions were formed. And so, the widow of a riparian owner is entitled to dower in the accretions to the land of which her husband was seized during coverture, whether they accrued whilst he owned the land or after he parted with the title. In this, as in other like cases, the incidents necessarily follow and are subject to the nature and condition of the principal estate.

Cobb v. *Lavalle*, 89 Ill., 331.
Gale v. *Kinzie*, 80 Ill., 132.
Lombard v. *Kinzie*, 73 Ill., 446.

But how, it may be pertinently asked, did the city acquire a title to the ground occupied by the railroad company? It is certainly no part of the land dedicated to the public on the plats of Fractional Section Fifteen Addition and Fort Dearborn Addition to Chicago; nor is it held by the city on the same trust. Before the railroad was built, the land belonged to the State. It was occupied by the company with the consent of the city, but the right to take it was derived from the State, under the grant to the company in its charter.

It is said in the opinion last referred to; that the city had the right as riparian owner, before the passage of the ordinance of 1852, to fill in the lake and erect walls to the extent necessary to protect its property against the violence of the water, if it did not thereby interfere with the public rights of navigation; and that power was expressly given it to erect a breakwater for that purpose. If it had itself erected a breakwater on the precise line adopted by the railroad company under the ordinance of 1852, and filled in the space between the breakwater and the shore, it would have become, says the learned judge, the owner of all the ground thus reclaimed and occupied. But it must be admitted, that whatever may have been potentially the rights of the city before the railroad was located, it could not, after possession had been lawfully acquired by the railroad company, rightfully invade that possession for the purpose suggested or any other. The city, as matter of fact, erected no breakwater and acquired no title to the land occupied by the railroad company before the passage of the ordinance of 1852; and, unless, what was done by the company pursuant to the terms of the ordinance invested the city with title, it acquired none afterwards.

It is intimated in the opinion that the city, instead of building a breakwater itself, *employed the railroad company to erect one*; and when the work was completed, and the area set

apart for the railroad had been filled in by the company, and the space between the railroad and the shore had been reclaimed by the city, the latter became the owner in fee of all such reclaimed ground, including that occupied by the railroad tracks and the breakwater. (Rec., 202.)

If the work done by the company was really performed by it as an agent of the city, there would be some plausibility in this theory. But if the work was done by the company on its own account, in the prosecution of the enterprise contemplated in its charter, namely, the construction of a railroad, no such result could possibly follow.

The important question then is, what relation did the railroad company sustain to the city under the ordinance and contract of 1852? The object of that ordinance was to provide for the location of the railroad within the city. The route to be adopted for the road depended upon the action of the common council. To obtain the requisite action was the only object the company had in view in making application to that body; and nothing is contained in the ordinance which does not relate either directly or incidentally to that subject. The consent granted by the ordinance was given upon certain conditions, one of which was that the company should erect and maintain a breakwater. But in the construction of that work the city was in no sense a principal and the company an agent. The city incurred no responsibility to third persons on contracts made by the company, or for negligence or other wrongful acts of the company or its servants, in prosecuting the work; and the work when completed belonged to the company, and not to the city. The real facts are, that the company obtained the consent of the city to lay out and construct its railroad on a certain prescribed route, and that it contracted certain obligations. But the reciprocal rights and duties of the parties do not depend upon the principles of the law

of agency. It is a mistake to suppose that any relation of agency was created between them.

If these views are correct, the title to the land occupied by the railroad company between Park Row and Randolph street is either in the company or in the State. We maintain that the title is vested in the company, on grounds already sufficiently explained. (See points III. and VIII). The title is derived from the grant made by the State in the company's charter. It was confirmed by the confirmatory clause in the Act of 1869, which has been held in this case to be valid and irrevocable. By the same clause the company is recognized as the riparian owner.

But whether the legal title is in the company or the State, it is, we respectfully submit, perfectly clear that the city has no estate in the premises, either legal or equitable, and is entitled therefore to none of the littoral or riparian rights which attach to the land next to the water.

XVI. If the State is bound by the Act of 1869, the information in this case must be dismissed.

The State is entitled to no relief unless it has the legal title and right of possession to some part of the premises in controversy. With the exception of the small triangular piece of ground next to Randolph street described in the ordinance of September 10, 1855 (*ante*, pp. 19, 20), and the dock or slip near the foot of Sixteenth street, which has been completed in accordance with the terms of the decree, (*ante*, pp. 30, 52), all the lands occupied by the company, which are involved in this litigation, are within the limits of the grant made in the Act referred to, or within the operation of the confirmatory clause contained in that Act. The submerged lands in dispute lying east of the breakwater, are also within the limits of the grant.

The small triangle next to Randolph street was occupied by the company, with the consent of the common council, in 1855. The consent was granted on conditions which have been already explained. (See point V). The right of the company to retain possession of it, under the provisions of its charter (See point III), is too clear to require further argument.

With respect to the dock or slip near the foot of Sixteenth street, it appears that a new breakwater was erected by the company at a short distance from the shore, to replace the old structure, which had fallen into decay (*ante*, p. 30) ; and a slip of small size has been constructed between the breakwater and the shore, where vessels may enter to receive and discharge their cargoes. The company is the owner of the land on the shore (see *ante*, p. 19), and has the same littoral rights as would belong to any other owner of the same land. The work is injurious to no one, nor is it an unlawful encroachment on the domain of the State. (See point VI.)

It was adjudged by the court below (*ante*, p. 50), that the railroad company is the owner in fee of all the wharves, piers and other works constructed by it east of its main tracks, between Park Row and Sixteenth street; and that it is also entitled to the use in perpetuity of all the ground it has possession of between Park Row and Randolph street. The right of the company to complete the slip near the foot of Sixteenth street was also expressly affirmed. (*Ante*, p. 52). If this ruling shall be sustained, and the State is bound by the Act of 1869, it is clear that no encroachment has been either made or threatened by the company upon the domain of the State, and this suit cannot be maintained.

XVII. The title of the railroad company to the land it has reclaimed from the lake does not depend altogether upon the grants made in 1869. It was held in the court below, that the

company's right to the possession and use of this land was clear upon other grounds, and the decision is undoubtedly correct.

A large part of the reclaimed land is within the limits prescribed in the ordinance of 1852, which, as has been seen (point IV), was ratified and confirmed by the legislature in 1861.

The piers and slips north of Randolph street, were constructed in front of the company's land on the shore. The right of a riparian proprietor to erect wharves in the shoal water of the lake adjacent to his land, has been so often affirmed by this court, that the subject is no longer open to controversy. (See point VI). The right does not depend upon title to the soil under the water, but may be exercised to the same, and no greater, extent, whether the fee be in the riparian proprietor or in the State. The plan for the exterior piers 1, 2 and 3, was submitted for approval to the War Department, which has exclusive control of the harbor, and, after reference to a board of engineer officers and their report thereon, received its official sanction. (*Ante*, pp. 27–29). No law of the State was infringed in making these improvements, nor is it pretended that they are an obstruction to the public right of navigation. They are, on the contrary, essential aids to navigation and conducive to the purposes for which the harbor was intended.

The erection of the wharf at the foot of Thirteenth street was also authorized by the War Department. (*Ante*, p. 30). This structure, as well as the pier built in 1870 to replace the old breakwater between Twelfth street and a prolongation of the north line of lot 21, which had fallen into decay, is in front of land on the shore to which the company has an undisputed title.

The larger part of the triangular space at the foot of Washington and Madison streets, outside the breakwater of 1869, which was filled in by the company in 1873, is within the area designated in the ordinance of 1852, and the use of the whole is indispensable to the convenient operation of the railroad.

By the express terms of its original charter, the company was authorized to enter upon and take possession of any lands or waters belonging to the State, which are necessary to the complete operation of its road. (See point I I I.) That the use of all the land which has been reclaimed from the lake, is, in fact, necessary to the efficient operation of the railroad, is conclusively shown by the evidence. (See *ante*, p. 31.)

It may be said that other railroad companies have been permitted to use the Illinois Central tracks and grounds, and that more land is needed for handling the business than would otherwise be required. It appears that when the testimony was taken two companies were thus accommodated. One of them (the Michigan Central) owns the freight grounds it occupies, and an equal interest with the Illinois Central Company in the old passenger station-house. It also uses the Illinois Central tracks in the passage of its trains to and from the city —the compensation paid for their use being fixed at a certain sum for each passenger and every ton of freight carried. This arrangement has existed since the railroad was first opened. The other company (the Baltimore and Ohio) was provided with temporary accommodations (since terminated) of a similar character. (Rec., 378–9, 382, 386–7.) Neither of these companies has ever occupied a foot of ground outside the breakwater of 1869. The piers which have been built north of Randolph street and at the foot of Thirteenth street have never been used by either.

The public are not injured by furnishing such accommodations to other companies; nor has the Illinois Central Company,

in what has been done, exceeded its lawful powers. All uses of railroad tracks and terminal grounds are legitimate which are authorized by law, and by the laws of Illinois such accommodations may be lawfully granted. It is no objection even to the exercise of the right of eminent domain, that the necessity of acquiring additional land is caused by furnishing trackage or depot accommodations to other companies. In such case the necessities of a lessee are considered in law as the necessities of the lessor company, and it is held that a lessee may prosecute proceedings of condemnation in the name of the lessor when the public necessity requires it.

Chicago and W. I. R. R. Co., v. *Ills. Central R. R. Co.*, 113 Ill., 156, 166.

Chicago, R. I. and P. Ry. Co. v. *Smith*, 111 Ill., 364.

City of Chicago v. *Chicago and W. I. R. R Co.*, 105 Ill., 74.

Chicago and W. I. R. R. Co. v. *Dunbar*, 100 Ill., 112, 137–8.

Kip v. *New York and Harlem R. R. Co.*, 67 N. Y., 227.

Matter of Staten Island Rapid Transit Co., 103 N. Y., 251.

See also:

Lake Superior and M. R. R. Co. v. *United States*, 93 U. S., 442, 446.

XVIII. The railroad company is lawfully entitled to the enjoyment of other rights, in no way dependent upon the Act of 1869, of which it is improperly deprived by the decree entered in the court below.

The company is the lawful owner of the land bordering on the lake between Park Row and Sixteenth street, and as such

owner has all the ordinary rights of a littoral or riparian proprietor with regard to the adjacent waters; it stands in the same situation with respect to such rights as the former owner.

Swinton Water Works Co. v. *Wilts and Berks Canal Co.*, L. R. 7 Eng. and Ir. Ap. Cases, 697.

Same case, L. R. 9 Chan. Ap. Cases, 451.

Hanford v. *St. Paul and D. R. Co.*, 43 Minn., 104.

One of the rights incident to land so situated, is to build and maintain suitable landing places, wharves and piers in the water in front of it. It is a right, no doubt, subject to certain limitations. It must be exercised in subordination to the public right of navigation, and it is also subject, perhaps, to such reasonable regulations and restrictions as the legislature by virtue of its general governmental power may think proper to establish. It is, nevertheless, a right which belongs to the land, and it is valuable. It is a property right which cannot be taken, even for public use, without compensation.

No restrictions on the exercise of the right have been imposed by the legislature of Illinois; but any further exercise of it by the riparian proprietor in this case, under any circumstances, is absolutely prohibited by the decree of the court below.

It is easily conceivable, and indeed extremely probable, that, even in the near future, additional wharves and slips will be required on this part of the shore for the suitable accommodation of lake commerce, from which the railroad company would also derive important advantages. No one but the riparian proprietor has the right to make such improvements, and, upon the case made by the pleadings and evidence, a decree which pro-

hibits the construction of suitable and necessary works of this character cannot be justified.

The company is also prohibited by the decree from taking possession of the hitherto unoccupied portion of the strip three hundred feet wide, described in the ordinance of 1852. Attention has been called to this point on a preceding page (see point IV), where we have endeavored to show that the rights of the company have not been forfeited by abandonment or non-user. The ordinance of 1852 was ratified by the legislature in 1861, and is of perpetual obligation. As between the company and the city or the State, the right of the former to the use of the entire strip is as perfect to-day as when the right first accrued. There are no equitable grounds on which the company can be deprived of any part of it.

The power of the War Department to determine whether, regard being had to the interests of commerce, the railroad company can be permitted to occupy any more land in the harbor, and, if so, upon what conditions, is not disputed. But this is a separate matter, which should be left for adjustment to the United States authorities in charge of the harbor. The State has no lawful control over such questions, and should not be placed in a position by the decree which will frustrate all hopes of making a satisfactory arrangement advantageous to all the large interests concerned.

The exceptions taken to that part of the decree by which the city is invested with title to the land occupied by the railroad company between Randolph street and Park Row, and the consequent right to construct wharves and docks in front of it, should also be sustained. It is impossible to hold, consistently with settled principles (see point XV), that the city has any interest, either legal or equitable, in the premises referred to.

Finally, we insist that the Act of 1869 opposes an impregnable barrier to the pretensions of both the State and the city. The objections raised to the validity of the Act are wholly devoid of legal merit; and to revoke the grants made by it, was beyond the constitutional power of the legislature.

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